

**STATE LEVEL AGREEMENT BETWEEN
THE COLORADO NATURAL RESOURCES CONSERVATION SERVICE AND THE
COLORADO HISTORICAL SOCIETY (8/03/07)**

WHEREAS, in May, 2002, the United States Department of Agriculture [USDA] Natural Resources Conservation Service [NRCS], National Conference of State Historic Preservation Officers [NCSHPO] and Advisory Council on Historic Preservation [AHP] entered into a National programmatic agreement [PA] regarding cultural resource compliance pursuant to the National Historic Preservation Act of 1966 and its implementing regulations [36 CFR Part 800], which PA is incorporated in its entirety into this State Level Agreement [SLA];

WHEREAS the PA encourages NRCS State offices and State historic preservation officers (SHPO) to enter into State level agreements tailoring certain issues delineated in the PA to each State;

WHEREAS, both the terms set forth in 36 CFR Part 800 and the definitions set forth in NRCS GM 420 Part 401 are applicable throughout this SLA;

NOW THEREFORE, the Colorado Natural Resources Conservation Service [CONRCS] and the Colorado Historical Society in its role as the SHPO agree to the following stipulations:

Stipulations

1. Cultural Resources Specialist: CONRCS shall engage at least one cultural resource specialist [CRS] meeting the qualifications set forth in "Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines -Professional Qualifications Standards" by (a) systematically contracting for needed investigations and surveys for actions beyond the scope of NRCS employee qualifications, certifications, and responsibility, and/or (b) hiring permanent, temporary, or intermittent employees with appropriate qualifications. CRS of CONRCS and the Intergovernmental Services Director or his or her designee for SHPO will be the primary staff contact.
2. Undertakings: CONRCS and SHPO will use the classification system in Attachment 3 to determine whether a project is an undertaking requiring compliance. Practices or activities not addressed in Attachment 3 will be presumed to have the potential to impact historic properties.
3. No Effect and Exempt Undertakings: In addition to Attachment 3, CONRCS and SHPO agree that the following types of projects have no effect or are exempt for SHPO review.
 - a. In-kind replacement, or replacing in the same manner with equivalent materials, of outlet/inlet structure are no effect undertakings because the in-kind replacement of the outlet/inlet structure will not change the existing course of a

- linear feature. Other examples: rebuilding, repairing, or maintenance of a structure as long as the integrity is preserved.
- b. In-kind maintenance/repair of a spring development or water-pumping station.
 - c. Small projects with no more than three landowners conducting work on existing irrigation field ditches, laterals, drains, diversions, or earthen dams (<5000 cu. yd. provided no significant engineering features are present), water pumping stations, and spring developments.
 - d. Work field ditches and ditches that have been filled-in, re-dug (not just cleaned), realigned, or changed due to a natural process (erosion).
 - e. Repair of a structure due to loss of function as a result of long-term (such as time-abandonment) or short-term (such as flood or fire) events when repair is with in-kind materials.
4. Consultation: SHPO will have 15 working days from receipt of CONRCS consultation requests to provide comment. If CONRCS simultaneously requests SHPO comment on both eligibility and effects, CONRCS and SHPO will negotiate the time by which SHPO should provide comments. If CONRCS identifies no potential historic properties or isolated finds, then consultation is unnecessary. However, CONRCS shall provide to SHPO a copy of the applicable form. A Limited-Results Cultural Resource Survey Form should be completed by CONRCS as stated in 5 below.
5. Use of SHPO Survey Manual and Inventory Forms: For consultation requests, CONRCS will follow and utilize the *Colorado Survey Manual* and SHPO approved inventory forms.
6. Access to Cultural Resources Information: Pursuant to SHPO established guidelines and fee schedules, SHPO agrees to provide to CONRCS access to cultural resource information in SHPO's cultural resource database as well as other records maintained by SHPO. Such information specific to site location and attribute data is to be released only to CRS employed by CONRCS. CRS may, in turn, release limited portions of these data to field offices to ensure consideration of currently recorded historic properties during planning activities. CONRCS agrees that any such data filed at field offices will not be available to the public and will be used only for planning CONRCS conservation activities.
7. Use of Field Office Personnel: CRS will provide oversight in the form of training and quality assurance and will provide the file searches with recommendations to staff on all projects that have the potential to impact historic properties and are accomplished by CONRCS field office personnel. Field office personnel who have satisfactorily completed a cultural resources training program developed in consultation with the SHPO will be considered qualified to determine whether artifacts, sites, etc. occur in the proposed ground-disturbing or potentially ground-disturbing practice area in consultation with CRS. Field office personnel will follow cultural resources procedures in Attachment 4. Field office personnel will notify CRS of discoveries in order that CRS may investigate the discovery before the project proceeds.

8. Training of Field Office Personnel: All field office personnel must successfully complete the NRCS National Cultural Resources Management Training series and complete or participate in a refresher cultural resources training program at least once every five years. CRS shall invite SHPO to participate in training and coordinate training times and locations with SHPO. If SHPO is unable to participate in training, a report of each such training session will be submitted to SHPO within 30 days of completion of training outlining the agenda topics, presenters, field training performed, and list of participants.
9. Traditional Cultural Properties and Native American Consultation: Traditional cultural properties will be treated in the same manner as other historic properties. Priority will be given to site avoidance. If the site is to be adversely impacted and determined by concurrence to be eligible for the National Register of Historic Places, CONRCS will consult with SHPO and Tribes to develop an appropriate treatment plan. CONRCS will also consult with representatives from Native American or ethnic communities pursuant to 36 CFR Part 800.
10. Discoveries: If previously unidentified historic properties [see precautions at no. 11 below for human remains or associated grave goods] are encountered during implementation of a practice, CONRCS will immediately cease technical assistance and will request that contractors cease working in the immediate vicinity of the discovery. CRS will notify SHPO of the discovery as soon as possible. Field assessment of the potential eligibility of the discovery will be by the CRS. If a professional archaeologist is monitoring construction, he/she may consult directly with SHPO staff to determine what measures need to be taken.
11. Human Remains: If human remains are identified in an APE during planning or during implementation of a conservation practice, all activities deemed likely to damage the remains will cease and the following steps will be taken:
 - a. CONRCS personnel will contact the coroner and the sheriff of the county in which the investigation shall be conducted.
 - b. CONRCS will notify the Colorado State Archaeologist [CSA] at SHPO of the discovery;
 - c. A professional archeologist will determine affiliation of remains and approximate age.
 - d. If the remains are determined to be of Native American extraction, CONRCS will follow the procedures outlined in Section 3 of the Native American Graves Protection and Repatriation Act (NAGPRA) on Federal Tribal lands and State Law (CRS24-80, Part 13) on private lands as amended.
 - e. If the remains are not part of an ongoing police investigation and are not of Native American extraction, CRS will consult with CSA in developing an appropriate plan for treating the remains.
 - f. CONRCS field personnel will take appropriate measures in order to protect the remains until the plan for treating the remains is completed.
 - g. Planning and construction activities at the site can recommence only after CRS staff and CSA agree, or a conflict resolution alternative is agreed to by ACHP, that the plan for treating the remains has been properly implemented.

12. Curation Arrangements: The CRS shall ensure that all materials and records resulting from cultural resources surveys or data recovery activities on federally owned property are curated in suitable facilities if NRCS is designated as lead Federal agency. CONRCS and SHPO will mutually agree to these facilities. It is understood that materials collected on private land remain the property of the landowner(s), with the exception of human remains and grave goods.
13. Privately Owned Material: The parties recognize that artifacts, records, and materials resulting from the implementation of this SLA may be privately owned. CONRCS will encourage the owners to donate the material to an appropriate curatorial facility, or permit CONRCS to duplicate the records and materials and document the artifacts for curation in an appropriate facility. SHPO agrees to consult with the CONRCS to develop appropriate curation measures or identify a suitable curatorial facility or facilities to house donated or duplicated materials recovered during the implementation of this SLA.
14. Emergencies: The following procedures will ensure that the need to protect life and property in an emergency is accomplished while taking historic properties into account to the maximum extent congruent with rapidly changing priorities and circumstances. These emergency situations are the following:

In an emergency CONRCS shall notify SHPO as soon as possible after the situation has been identified and accepted as an emergency. This notification should include circumstances creating the emergency, work to be undertaken, and any consideration of historic properties, as appropriate. SHPO will then respond within 7 days to CONRCS after receipt of said notification. CONRCS will document and avoid adverse impacts to historic properties encountered during emergency work to the fullest extent practicable. For major disasters, CONRCS may elect to waive part of its cultural resources responsibilities as allowed under the PA.

Attachment 7 addresses an abbreviated form for SHPO in order to document emergency situations.

15. Public Participation and Objections: Public participation and objections are sought during planning of practices that have the potential to impact historic properties as stipulated under 36 CFR 800 and the Privacy Act. CONRCS, at the discretion of the agency, shall make information available and give consulting and interested parties the opportunity to comment on documents or plans related to the evaluation, assessment, and management of historic properties including the mitigation of adverse effects and curation of recovered data. If at any time during implementation of the measures stipulated in this SLA, should an objection to any such measure be raised by a member of the public, the CONRCS shall take the objection into account and consult as needed with the objecting party, SHPO, and/or the ACHP.

16. Dispute Resolution: If an objection is raised by the ACHP, SHPO, other governmental agency official, project applicant, property owner, or member of the public, CONRCS shall consult with the objecting party to resolve the objection. If the objection cannot be resolved, CONRCS and the objecting party shall forward all relevant documentation to ACHP. ACHP shall have thirty (30) calendar days following receipt of all pertinent documentation to render a recommendation. CONRCS and the objecting party shall take into account the ACHP opinion in reaching a final decision on the issue of the objection.
17. Sharing Technology and Information: CONRCS and SHPO mutually agree that historic properties are an integral part of our Nation's resources and will ensure that these resources are fully considered in all CONRCS undertakings. The conservation ethic of CONRCS is in harmony with mandates requiring Federal agencies to become active partners in the stewardship of our Nation's historic properties.

SHPO will provide CONRCS with assistance in conducting cultural resources reviews by providing CONRCS with site data and by providing CONRCS with any other information pertaining to resource sensitivity analysis and/or site prediction modeling.

CONRCS agrees to provide technical assistance in erosion control and protection of historic properties when requested by SHPO and as time and staff resources permit. CRS coordinates the request.

18. Annual Report: Annually, by January 31, CONRCS shall provide a written report to all signatories to this SLA on the actions taken to fulfill its terms. This report may serve in part to determine if an addendum or amendment to this SLA is necessary. The report will consist of the following:

- a. Practices determined by CONRCS to have no affect on properties pursuant to Attachment 3.
- b. Properties submitted to SHPO for evaluation.
- c. Status of projects for which consultation was initiated within the last fiscal year.

CONRCS staff and SHPO including the Intergovernmental Services Director or his or her designee for SHPO shall meet at least once a year, and twice per year during the first two years following execution of this SLA, to discuss their respective activities and to review the success of this SLA. CONRCS shall invite the ACHP to participate in these meetings. Such participation shall be at the option of ACHP.

19. Monitoring: ACHP and SHPO may monitor activities carried out pursuant to this SLA and ACHP will review such activities if so requested. CONRCS will cooperate with ACHP and SHPO in carrying out their monitoring and review responsibilities.
20. Items Not Covered in this Agreement: CONRCS and SHPO agree that matters not discussed in this SLA will be handled in accordance with GM 420 Part 401, and the PA.

21. Amendment or Termination: If any of the signatories determines that the terms of this SLA cannot be met or believes that a change is necessary, that signatory shall immediately request the consulting parties to consider an amendment or addendum to the SLA. Such an amendment or addendum shall be executed in the same manner as the original SLA. Any signatory may terminate this SLA at any time with sixty [60] days prior written notice to all signatories. If the SLA is terminated, the CONRCS shall comply with Section 106 in accordance with 36 CFR Part 800.

If CONRCS cannot carry out the terms of this SLA, it shall not take or sanction any action or make any irreversible commitment that may result in an adverse effect with respect to a National Register listed or eligible property covered by this SLA or that may foreclose the consideration of ACHP for modifications or alternatives to project proposals that could avoid, minimize, or mitigate the adverse effects until the commenting process has been completed.

NATURAL RESOURCES CONSERVATION SERVICE

By:  , State Conservationist
Allen Green Date 8/9/07

COLORADO HISTORIC SOCIETY

By:  , State Historic Preservation Officer
Georgianna Contiguglia Date 8/9/07

Attachment 1
National Programmatic Agreement

PROGRAMMATIC AGREEMENT

AMONG

**THE UNITED STATES DEPARTMENT OF AGRICULTURE
NATURAL RESOURCES CONSERVATION SERVICE,**

**THE ADVISORY COUNCIL ON HISTORIC PRESERVATION
AND**

**THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION
OFFICERS**

Relative to: Conservation Assistance

WHEREAS, the United States Department of Agriculture, Natural Resources Conservation Service (NRCS), formerly known as the Soil Conservation Service, carries out Conservation Assistance programs for soil, water, and related resource conservation activities under the Soil Conservation and Domestic Allotment Act of 1935 (Public Law 74-46, 16 U.S.C. 590 a-f, as amended); the Flood Control Act of 1944 (Public Law 78-534, as amended); the Watershed Protection and Flood Prevention Act (Public Law 83-566, as amended, 16 U.S.C. 1001-1012); the Agricultural and Food Act of 1981 (Public Law 97-98, 95 Stat. 1213); the Agricultural Credit Act (Public Law 95-334), Title IV, Section 403); Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101-624); the Flood Control Act of 1936 (Public Law 74-738); the Food Security Act of 1985 (Public Law 99-198, as amended); the Federal Agricultural Improvement and Reform Act of 1996 (Public Law 104-127); and related authorities; and

WHEREAS, the NRCS, in consultation¹ with the Advisory Council on Historic Preservation (Council), the National Conference of State Historic Preservation Officers (NCSHPO), and a number of federally recognized Indian Tribes, has determined that certain categories of its conservation programs and activities that meet the definition of undertakings² pursuant to the National Historic Preservation Act of 1966 (NHPA) (16 U.S.C. 470f, as amended, Section 301(7)) and the Council's implementing regulations for Section 106 of the Act, "Protection of Historic Properties" (36 CFR Part 800) may affect historic properties as defined in 800.16(l).³ These activities are therefore subject to review under Section 106 of the NHPA and the Council's implementing regulations; and

WHEREAS, because of the sovereign status of federally recognized Indian Tribes, the NRCS has determined, and the Council has concurred, that it is appropriate to invite each federally recognized Indian Tribe to develop independent consultation protocols with the NRCS (based upon government-to-government consultation) and, hence, no Tribes have been asked to be signatories to this agreement; and

WHEREAS, the NRCS has consulted with a number of federally recognized American Indian governments and Tribal Historic Preservation Officers (THPOs) through direct Nation-to-Nation communication and has extended an invitation to consult with other Tribal governments through several United States Department of Agriculture and NRCS liaison organizations (including the NRCS' State and Regional Tribal liaisons, the NRCS American Indian and Native Alaskan Employees Association, the Inter-Tribal Agriculture Council, the Southwest Indian Agricultural Association), the NRCS American Indian Program Manager, the United Southern and Eastern Tribes, members of the National Association of Tribal Historic Preservation Officers, regarding this agreement and establishment of the NRCS policy regarding establishment of Tribal consultation protocols; and

WHEREAS, a streamlined NRCS compliance process for technical assistance activities delivered at the Field Office (county) level is appropriate to the large number of small undertakings on private and public property and Tribal lands,⁴ the NRCS has determined there is: (1) the need for timely services to diverse NRCS clientele dependent upon agricultural production; (2) the need to provide categorical exemptions for certain NRCS programs, activities and technical assistance practices that are clearly undertakings but with effects that are foreseeable and likely to be minimal or not adverse, to historic properties (in accordance with 36 CFR 800.14(c)); (3) the need to reconcile the variable emergency directives contained in NRCS (7 CFR Part 624) and Council (36 CFR 800.12) regulations; and (4) the need for reliance on agreements or consultation protocols with State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPO) and Governments of Federally recognized Indian Tribes (in accordance with the ACHP regulations, 36 CFR 800.2(c)(1) and 800.2(c)(2)); and

WHEREAS, 36 CFR 800.14(c) permits agencies to propose categories of programs or activities that may be exempted from review under the provisions of 36 CFR 800, Subpart B, the Section 106 Process. The NRCS provides conservation assistance through categories of programs or activities that, by definition (36 CFR 800.16(y)) may be considered undertakings. Under provisions of 36 CFR 800.14(c), some broad categories of these programs and activities may be exempt because the potential effects are foreseeable and likely to be minimal or not adverse.

WHEREAS, the NRCS proposes to comply programmatically with Section 106 of the NHPA (16 U.S.C. 470f), as authorized by the Council regulations (36 CFR 800.14(b)) by means of subsequent agreements with the designated SHPO for actions on private and public lands within a particular state, and consultation protocols with the designated THPO for actions on Tribal lands, and the SHPO and Tribal Government(s) for actions on Tribal lands where no THPO has been designated by the National Park Service of the US Department of the Interior or where a Tribe has an expressed interest in resources on non-Tribal lands; and

WHEREAS, this agreement does not modify Tribal roles and responsibilities as defined in 101(d)(2) of the NHPA (16 U.S.C. 470f) nor to Tribal government roles and responsibilities on Tribal lands because these will be addressed by direct compliance with the 36 CFR Part 800 regulations or individual consultation protocols or agreements with federally recognized Tribes; and

WHEREAS, in the absence of State Level Agreements (SLAs) and/or appropriate Tribal consultation protocols, the NRCS' responsibilities for compliance under Section 106 of the NHPA shall be met by direct compliance with the Council's regulations (36 CFR Part 800, dated December 12, 2000 and in effect since January 12, 2001, or subsequent rules under that title), and

WHEREAS, unless otherwise defined in this Agreement, all terms are used in accordance with definitions codified at 36 CFR Part 800.16;

NOW THEREFORE, the NRCS, the Council, and the NCSHPO agree that a streamlined compliance process is desirable for the NRCS' conservation assistance activities and that the NRCS is committed to carry out its responsibilities under Section 106 of the NHPA in accordance with the statements above and the following stipulations, thereby taking into account the effects of its conservation program activities on historic properties that are eligible for listing in the NRHP. The NRCS shall acknowledge this commitment in any new State Level Agreements (SLAs) developed with the State Historic Preservation Officers. Additionally, the NRCS and the Council agree that in recognition of the sovereign status of federally recognized Indian Tribal governments, this nationwide agreement does not apply to Tribal lands nor Tribal review of undertakings pursuant to 101(d)(2) of the NHPA. Rather, the NRCS is committed to simultaneously seeking consultation protocols with individual THPOs and, where there is no 101(d)(2) THPO, other individual governments of federally recognized Indian Tribes.

STIPULATIONS

I. COMPLIANCE THROUGH PROGRAMMATIC PROCEDURES

- A. For purposes of compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f)) for conservation assistance activities, the NRCS will follow its policy and procedures for protecting historic properties set forth herein and the procedures resulting from this PA and issued in the NRCS General Manual and associated Cultural Resources Handbook (as they are updated). The procedures set forth in this agreement shall take effect only when an SLA with the relevant SHPO and consultation protocols with relevant Federally recognized Indian Tribes are in effect. Specifically, a) the SLAs are between the NRCS State Conservationist and the designated SHPO for actions on private and public lands; b) consultation protocols are between the NRCS State

Conservationist and the designated THPO for actions on Tribal lands; and c) between the NRCS State Conservationist, the SHPO and Tribal Government(s) for actions on Tribal lands where no THPO has been designated. The SLAs and consultation protocols may also cover procedures for Tribal consultation where a Tribe has an expressed interest in resources on non-Tribal lands (on private or public land, and recognizing the SHPO's consultation role for these lands as well). The NRCS, through its State Offices, will follow the Advisory Council's regulations, 36 CFR Part 800, in each State that does not have an SLA or consultation protocol in effect.

- B. The NRCS will continue to update and refine policies and procedures for protecting historic properties to ensure that they are current with legislative mandates, pertinent executive orders and regulations. The NRCS will also issue directives to improve and clarify methods for protection of historic properties. The Council and the NCSHPO will provide the NRCS with copies of new policy and regulatory documents that may affect agency procedures.

2. STATE AGREEMENTS AND TRIBAL CONSULTATION PROTOCOLS

A. STATE LEVEL AGREEMENTS

Designated NRCS State Office officials shall meet with the SHPOs to develop State Level Agreements (SLAs) or to update existing SLAs to ensure they meet the requirements of this agreement, the National Historic Preservation Act and its amendments and the current implementing regulations for Section 106 of the NHPA (36 CFR Part 800). The purpose of these State Level Agreements is to tailor compliance procedures and requirements of the NHPA and the Section 106 implementing regulations to local conditions that cannot be uniformly addressed at the national level. These SLAs are to include:

- 1) Delineation of Section 106 review and consultation procedures specifying, by title, who carries out various portions of consultation, identification, evaluation, and review, and designating, by location and title, the Cultural Resources Specialist for the NRCS State Office who meets the Secretary of Interior's standards for historic preservation personnel (The Secretary of the Interior's Professional Qualification Standards (48 FR 44716, September 29, 1983). This specialist (archaeologist, historian, architectural historian, or other historic preservation professional) must be available to oversee resources identification, determinations of eligibility and development of historic properties treatment recommendations. The SLA shall detail the roles and responsibilities of the trained field personnel and the professional Cultural Resources Specialist (s).

- 2) Provision for consultation with Indian Tribes consistent with Section 101(d)(6)(B) of the Act and 36 CFR Part 800 or Indian Tribal consultation protocols executed between the NRCS and the Indian Tribes that attach cultural and religious significance to historic properties in that state (see B below).
- 3) Delineation of SHPO staff responsible for working with the NRCS State Office on the Section 106 review and consultation procedures and the SHPO staff authorized to sign consultation correspondence and agreements.
- 4) A schedule for annual review with the SHPO and, as appropriate, for revision of the SLA.
- 5) A schedule for training of field personnel on basic NRCS policy, procedures and field identification processes, using the NRCS modular training or more recently updated training developed in the State Office. The NRCS State Offices shall encourage SHPO staff and the THPOs and Tribes (see B. Tribal Consultation Protocols) to attend and participate in the training sessions.
- 6) A list of practices and/or programs exempted from case-by-case review, as appropriate to the cultural, historical, and ecological conditions within the State, beyond those listed in Paragraph 3, "Exemptions," below, because they are a type of activity with foreseeable effects that are minimal or not adverse to resources eligible for listing in the NRHP. Practices and programs may also be exempt from case-by-case review where the reasonable and foreseeable effect of implementation benefits historic properties. These lists will be developed by the designated the NRCS State Office staff and the SHPO staff and incorporated into the final SLA.
- 7) Emergency provisions consistent with Section 800.12 of the Council's regulations and Section 110(j) of the NHPA and its implementing regulations found at 36 CFR Part 78.⁵ These procedures are to be developed as part of each SLA or a stand-alone pre-disaster agreement (to be incorporated into the State's Emergency Watershed Program Pre-Disaster Plan) in consultation with the SHPO and/or THPO.
- 8) Public participation provisions that recognize the rights of private and Tribal land owners and are commensurate with the nature, scale and complexity of proposed projects (see 800.2 (c) and (d)). These must address Tribal consultation in those undertakings that are not on Tribal land.

9) Dispute resolution provisions.

B. AMERICAN INDIAN TRIBAL CONSULTATION PROTOCOLS

The NRCS State Offices shall continue to consult with Tribal Historic Preservation Officers and Federally recognized Tribes that do not have a designated THPO in order to establish consultation protocols for undertakings on Tribal lands.

Discussions in developing consultation protocols shall be government-to-government and direct, in person, and otherwise initiated in an appropriate manner for each individual Tribal government. The Tribal and NRCS representatives shall work together to develop the consultation protocols. Form letters and public notices, among other forms of notification, are not appropriate when used as the sole attempt to consult.

Whenever possible, the discussions and consultation protocols shall be built upon existing relationships between the NRCS and Tribal governments, established through the NRCS' technical assistance programs, while recognizing the importance of government-to-government communication with sovereign Indian Tribes. When agreed upon by all parties or as set out by the Council's regulations (36CFR800.3(c)(1)), the NRCS shall invite the SHPO to participate in these consultation activities.

During development of the consultation protocols, the State Office officials shall review with the Indian Tribe the list of exemptions outlined in Paragraph 3 (Exemptions, below) of this agreement. Exemptions developed with the SHPO in the SLA and the broad category exemptions included in Paragraph 3, "Exemptions," of this agreement do not necessarily apply to Tribal lands. All exemptions must be established during the development of individual Tribal consultation protocols and in accordance with 36 CFR 800.14(c).

These consultation protocols shall establish:

- 1) Delineation of Section 106 review and consultation procedures specifying, by title, who carries out various portions of consultation, identification, evaluation, and review, and designating, by location and title, the Cultural Resources Specialist for the NRCS State Office who meets the Secretary of Interior's standards for historic preservation personnel (The Secretary of the Interior's Professional Qualification Standards (48 FR 44716, September 29, 1983). This specialist (archaeologist, historian, architectural historian, or other historic preservation professional) must be available to oversee resources identification, determinations of eligibility and development of historic properties treatment recommendations. The consultation protocol shall detail the roles and responsibilities of the trained field personnel and the professional Cultural Resources Specialist (s).

- 2) Who (by title), will participate in consultation for the NRCS and for the American Indian Tribe.
- 3) When, where, and in what format (written, face-to-face meetings, etc.) this consultation shall take place.
- 4) Any actions, programs or practices exempted from case-by-case review (including but not limited to the general exemptions herein).
- 5) Timeframes for responses to requests for consultation.
- 6) A schedule for training of field personnel on basic NRCS policy. The NRCS State Office shall encourage Tribal and/or THPO staff to attend and participate in the training sessions.
- 7) Any other specific needs (e.g. level and form of documentation of the proposed action) to complete the protocol.
- 8) Emergency provisions consistent with Section 800.12 of the Council's regulations and Section 110(j) of the NHPA and its implementing regulations found at 36 CFR Part 78.
- 9) Public participation provisions that recognize the rights of private and Tribal land owners and are consistent with Tribal ordinances and commensurate with the nature, scale, and complexity of the proposed actions (see 800.2 (c) and (d)).
- 10) Dispute resolution provisions.

C. COUNCIL PARTICIPATION IN DEVELOPMENT OF AGREEMENTS

At any time during negotiations for the development or revision of a SLA or Tribal consultation protocol, any party may request in writing that the Council participate in the negotiations. The Council shall then investigate the need for participation and within 30 days of the request inform the requesting party and all other consulting parties of the decision about whether to participate. Should the Council choose to participate, the State SLA or Tribal protocol may include the Council as a signatory. Should the Council choose not to participate, the parties may proceed to complete consultation regarding terms of the SLA or protocol and sign it prior to filing the SLA or protocol with the Council Headquarters in Washington, DC, and the NRCS Federal Preservation Officer (FPO)

D. LACK OF A STATE LEVEL AGREEMENT OR CONSULTATION PROTOCOLS

If for any reason a NRCS State Conservationist determines it is not possible to establish an agreement with the SHPO or it is not possible or appropriate to establish a consultation protocol with any Federally recognized Tribe, the NRCS State Conservationist shall document this fact in writing and place it in the NRCS State Office files, with a copy to the NRCS FPO. The FPO shall forward this documentation to the Council.

Until an SLA and consultation protocol(s) are properly executed, the NRCS State Office shall comply with Section 106 of the National Historic Preservation Act in accordance with 36 CFR Part 800.3-800.7 and *none of the provisions of this agreement shall apply*, including Paragraph 3, "Exemptions."

E. UPDATING, COMPLETION AND DISTRIBUTION OF AGREEMENTS AND PROTOCOLS

The NRCS will maintain a copy of each final SLA and American Indian consultation protocol on file in the Washington, DC office of the Council and with the NRCS FPO. All SLAs and American Indian Tribal consultation protocols must be consistent with this agreement and must meet the requirements of the Council regulations, 36 CFR Part 800. The NRCS State Conservationist shall submit each agreement and Tribal consultation protocol to the FPO and Council Washington, DC Headquarters office upon completion. The Council and the NRCS FPO (and members of the NRCS senior management, as necessary) will have 30 days to review and comment on the completeness and consistency of each agreement. Upon completion of this review and concurrence on and integration of needed revisions, or upon expiration of the 30 days, the agreement shall be in effect.

All extant SLAs or Tribal consultation protocols must be reviewed by all relevant parties (including the NRCS State Office, the SHPO, THPO, Tribes, the NRCS FPO and Council Washington Office) and updated to ensure consistency with the Council's regulations and this agreement. This review and update must take place within one calendar year of the date of ratification of this PA or the SLAs or Tribal consultation protocols shall be suspended. The NRCS State Offices shall forward all new SLAs or Tribal consultation protocols to the NRCS FPO after obtaining signatures of all participating parties. The FPO will forward copies of this document to the Council, Washington Office, for review and concurrence. Such agreements shall be in effect upon concurrence by the NRCS FPO and Council or after 30 calendar days, whichever comes first.

These SLAs and consultation protocols are to address the NRCS NHPA Section 106 compliance responsibilities for conservation assistance undertakings that may affect historic properties listed in or eligible for listing in the NRHP.

3. NATIONAL EXEMPTIONS

The NRCS provides conservation assistance through categories of programs or activities that, by definition (36 CFR 800.16(y)) are generally considered undertakings. The NRCS, the Council and the NCSHPO have determined that several broad categories of NRCS activities or programs may be undertakings but may also be exempted nationwide under the provisions of 36 CFR 800.14(c) because their potential effects are foreseeable and likely to be minimal or not adverse. These are:

- A. Advice or technical assistance, including the development, review and/or approval of conservation plans or technical designs when NRCS provides no financial assistance for their implementation or otherwise exercises no control over implementation (for example, design advice from the NRCS National Handbook of Conservation Practice Standards for a farm pond that is installed, independently by the agricultural producer⁶ with his or her own funds and private contractor).

When known to the NRCS, the agency will advise the producer when proposed practices that are to be installed without any Federal assistance appear to have the potential to affect historic properties and provide the name(s) of possible contacts (e.g. the SHPO and THPO) who may provide guidance on identifying and protecting historic properties. Additionally, the plan will advise the producer that state or local cultural resources, historic preservation or state burial laws may apply. The producer may use these data if he/she decides to implement the conservation plan without NRCS financial assistance.

- B. Technical determinations based upon empirical or factual findings and determinations of compliance or non-compliance including, but not limited to, wetlands determinations, determinations of highly erodible land, certification of the existence of a wetland or highly erodible land, determination of prime and unique farmland, and the like;
- C. Analyses of data from technical determinations or resource inventories, including but not limited to Soil Survey (7CFR Part 611), Snow Survey and Water Supply Forecasts (7CFR Part 612), Plant Materials for Conservation recommendations (7 CFR Part 613), River Basin Studies under Section 6 of P.L. 83-566 (7 CFR Part 621);

- D. Development or revision of technical standards and specifications.
- E. Changes or amendments to approved actions when the NRCS State Office, in consultation with the SHPO/THPO, concur that such changes have no potential to affect National Register eligible properties.
- F. Resource inventory, monitoring, field trials, and other information gathering activities that do not involve subsurface disturbance.
- G. Conservation easement purchases, the management plans for which do not call for structural modification or removal or ground disturbing activities.

Programs of study under the authority of Public Law 83-566, as amended (implemented through 7 CFR Part 621), specifically: River Basin Studies, Floodplain Management Studies, Natural Resource studies.

Before implementing any nationally exempted activities, the NRCS State Cultural Resources Specialist or Coordinator will review the foreseeable effects of the activity to ensure that there are no special circumstances that might result in adverse effects to NRHP eligible resources.

Exemption of NRCS conservation practice standards installed in the field must be reviewed at a local or regional level, taking into account the cultural, historical, ecological and environmental variables, local methods of installation and maintenance considerations that may comprise direct or indirect effects (800.5(a)(1)). These local or regional exemptions will be included in SLAs and Tribal consultation protocols (see Stipulation 2, above) and, therefore, developed in consultation with the relevant SHPO, THPO or Indian Tribe and subject to review and revision by the NRCS Headquarters and the Council prior to final implementation.

4. MONITORING, ANNUAL REPORTING AND REVIEW

A. MONITORING.

The NRCS (National Headquarters and State Offices) will inform the NCSHPO, individual SHPOs, THPOs, American Indian Tribal Governments, and the Council regarding NRCS actions pursuant to this Agreement or individual State Level Agreements, and Tribal consultation protocols. Such monitoring may be initiated through NRCS management reviews, as necessary, or through Council staff reviews.

B. ANNUAL REPORTING.

The NRCS Headquarters shall provide the Council, NCSHPO and any Tribal government that requests it, a copy of the annual cultural resources report it submits to the Department of Interior. This report is generally available by March 1 (and no later than March 30) for the preceding calendar year. The report is produced for incorporation into the Executive Branch's annual report to Congress in accordance with the Archaeological and Historic Preservation Act of 1974 (PL 93-296). This report includes:

- 1) A summary of activities conducted by the NRCS in each state and on Tribal lands.
- 2) A descriptive summary of the NRCS efforts to conduct its cultural resources training program for field personnel, partners and cooperating agencies and any problems encountered and accomplishments achieved in this effort.
- 3) A report, as appropriate, identifying any issues, initiatives or goals the NRCS will address in the coming year with regard to its cultural resource program, and any guidance or assistance that the Council or NCSHPO may provide to help make compliance activities more effective.
- 4) A discussion identifying any problems the NRCS encountered in carrying out the terms of this agreement that need to be addressed by the signatories through amendments or development of guidance documents.
- 5) Any other information the NRCS wishes to provide that might improve the effectiveness of this agreement.

C. REVIEW

Upon receipt of the annual report, the Council, NCSHPO, and any recipient Tribal government shall have thirty (30) days to review and comment on the adequacy of the report, and to respond to any questions or requests posed by the NRCS regarding its content and findings.

- 1) Any signatory to this Programmatic Agreement may request in writing signatories meet to review and discuss any aspect of the annual report. Upon receipt of such a request, the NRCS shall arrange for the parties to meet (in person or by teleconference) and invite other participants, as necessary, and discuss the questions or concerns.

- 2) Failure by the NRCS to provide an annual report by March 30 of the following year without explanation may constitute grounds for the Council and NCSHPO to suspend this agreement. Such a suspension of the agreement will take effect, after discussion with the NRCS FPO and appropriate members of the NRCS senior management and upon receipt by the NRCS of written notification from the Council and NCSHPO. Such a suspension shall be lifted upon receipt of the report by the NCSHPO and Council.

5. DISPUTE RESOLUTION

Should any signatory to this agreement object to any actions or documents issued under the terms of this agreement, the NRCS shall, in an effort to resolve the objection, confer with the signatory. If the NRCS or objecting party determines that the issue cannot be resolved within 30 days of receipt of the objection, the NRCS shall provide all relevant information regarding the dispute, including the NRCS proposed resolution to the Council for comment. Within 30 days of receipt of all relevant documentation, the Council will either:

- A. Provide the NRCS with recommendations which the NRCS shall take into account in reaching a final decision regarding the matter; or
- B. Notify the NRCS FPO that it will comment pursuant to 36 CFR Section 800.7(c), and proceed to comment within 45 days of notification to the NRCS.
- C. Any recommendations or comments provided by the Council shall be taken into account by the NRCS with reference to the subject of the dispute, in accordance with 36 CFR Section 800.7(c). Any recommendations or comments provided by the Council will be understood to pertain only to the subject of the dispute; the NRCS responsibilities to carry out all actions that are not the subjects of the dispute will remain unchanged.
- D. At any time during implementation of this agreement, should a member of the public or a Federally recognized Indian Tribe object to any measure of this agreement, or its implementation, the NRCS shall take into account the objection and confer with the objecting party, SHPO, THPO, and/or Council as needed to resolve the objection within 45 days. The NRCS is responsible for making the final decision after conferring with the other parties.

6. AMENDMENT

Any signatory to this agreement may propose that it be amended or modified, whereupon the parties will confer and consider such amendment. Any resulting amendment shall be executed in the same manner as the original agreement and require the agreement of all signatories.

7. TERMINATION

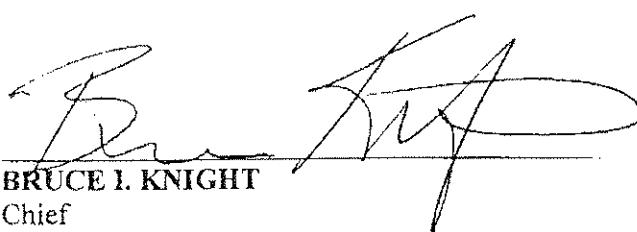
Any signatory to this agreement may terminate it by providing written notice to the other parties with specific reasons for such termination. During a 60-day period following the notice, the signatories shall consult and attempt to resolve the issue(s) leading to the notice. If the signatories are unable to resolve the issues, termination will occur at the end of the 60-day period. As stated above, under such termination, the NRCS will complete its Section 106 compliance for individual undertakings in accordance with the Council's regulations, 36 CFR Part 800.

8. EXPIRATION

This agreement shall expire ten years from the date of execution. This agreement is dependent upon biennial (every other year) consultation among the signatories to review the adequacy of implementation of the Agreement.

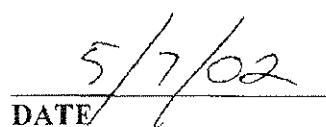
Execution of this programmatic agreement and implementation of its terms evidences that the NRCS has taken into account the effects of its assistance activities and programs on historic properties, and has afforded the Council a reasonable opportunity to comment on its assistance activities and their likely effects on historic properties.

Signatories:



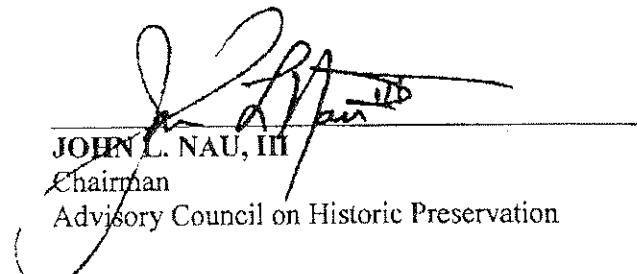
BRUCE I. KNIGHT

Chief
Natural Resources Conservation Service



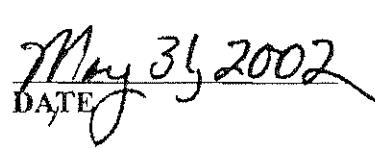
DATE

5/7/02



JOHN L. NAU, III

Chairman
Advisory Council on Historic Preservation



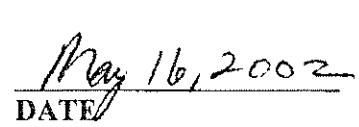
DATE

May 31, 2002



EDWARD F. SANDERSON

President
National Conference of State Historic
Preservation Officers



DATE

May 16, 2002

ENDNOTES

¹ 36 CFR 800.16(f) defines consultation as: "the process of seeking, discussing and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's 'Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act:' provide further guidance on consultation."

This definition is used in this agreement. Section 800.2 defines the participants in the Section 106 process (agency official, Council, consulting parties, the public); Section 800.2(c) outlines the consulting parties who work with the agency official (SHPO, Indian Tribes and THPOs and Native Hawaiian organizations, representatives of local government, applicants for Federal assistance, and others with demonstrated interest); and Section 800.6(c)(1) defines signatories who have the sole authority to execute, amend or terminate a memorandum of agreement that defines resolution of adverse effects.

² 36 CFR Part 800.16(y) defines Undertaking as: "a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit or license or approval; and those subject to State or local regulations administered pursuant to a delegation or approval by a Federal agency."

³ 36 CFR 800.16(l)(1) defines historic property as: "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria." 36 CFR 800.16(l)(2) defines "eligible for inclusion in the National Register" to include "both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria." NOTE: NRCS uses the phrase "cultural resources" to be equivalent to "historic properties," when discussing compliance with Section 106 of the NHPA.

⁴ Section 800.16(x) states Tribal Lands "means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities"

⁵ Section 800.12, Emergency situations, addresses emergencies and encourages agencies to develop procedures for use during emergency programs designed to respond to a disaster or emergency declared by the President, a Tribal government or Governor of a State or to respond to other immediate threats to life or property (such as NRCS' Emergency Watershed Program).

Section 110(j) of the NHPA, as implemented by 36 CFR Part 78, permits NRCS to waive Section 110 compliance if the Chief or his/her designee (State Conservationist) determines that emergency action is necessary to ensure the immediate "preservation of human life or property." 36 CFR Part 78.3 states that the waiver may be invoked in only a limited range of circumstances involving "major natural disaster or imminent threat to

the national security." In such cases, within 12 days, the Chief or his designee (the State Conservationist) must notify the Secretary of the Interior, in writing, identifying: (1) the major disaster necessitating the waiver; (2) the period of effect of the waiver (generally no more than 30 days after the determination that disaster assistance is needed); (3) which parts of Section 110 have been waived; (4) the geographic area to which the waiver applies; (5) the measures to be taken to minimize harm to historic properties. In all cases, information copies of the notice sent to the Secretary of the Interior shall also be forwarded to the Council, the SHPO and the NRCS FPO in NRCS Ecological Sciences Division. In all other cases, the SHPO must be consulted and follow-up documentation shall be sent to the Council.

⁶ "Producer" refers to an agricultural or livestock producer, that is, a farmer or rancher.

Attachment 2
NRCS General Manual 420 Part 401
Cultural Resources (Archeological and Historic Properties)



Part 401 - Cultural Resources (Archeological and Historic Properties)

Subpart A - General

401.0 Purpose

This part establishes the Natural Resources Conservation Service (NRCS) policy regarding responsibilities to historic and cultural properties under the National Historic Preservation Act of 1966 (NHPA), implementing regulations, NRCS Nationwide Programmatic Agreement, and other related authorities. This policy

- (1) Is consistent with Section 106 of the NHPA, recognizes NRCS' lead responsibility to take into account the effects of its actions, or the voluntary actions of participants in NRCS administered conservation programs, on any cultural resource (district, site, building, structure, object, or traditional cultural property) and to appropriately protect historic properties under its control or affected by agency programs, projects, activities or assistance;
- (2) Acknowledges NRCS' responsibility to consult with its partners, including but not limited to the State Historic Preservation Officers (SHPOs), Tribal Historic Preservation Officers (THPOs), federally recognized American Indian Tribes, and local governments;
- (3) Is consistent with Sections 106, 110, and 112 of the NHPA, acknowledges NRCS' responsibility to establish an historic preservation program appropriate to its conservation mission; designate a Federal Preservation Officer (FPO) to coordinate policy development and implementation; protect historic properties through avoidance of adverse effects whenever possible and through the professionalism of its employees and contractors; and to ensure NRCS actions meet the basic professional standards for the implementation of Federal historic preservation and environmental laws, regulations, and associated authorities.
- (4) Is consistent with the NRCS Nationwide Programmatic Agreement with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers, ratified on May 31, 2002, which was developed in accordance with the National Historic Preservation Act (16 USC

470f) and implementing regulations for Section 106 of the Act, found at 36 CFR Part 800.14(c), and provides policy for streamlined compliance with the NHPA.

401.1 Authorities

- (1) National Historic Preservation Act of 1966 (NHPA), (P.L. 89-665, 80 Stat. 915, as amended; 16 U.S.C. 470; et seq.)
- (2) NRCS' Nationwide Programmatic Agreement (PA) NRCS A-3A75-2-64, May 31, 2002, entitled: Programmatic Agreement among the United States Department of Agriculture, Natural Resources Conservation Service, The Advisory Council on Historic Preservation, and The National Conference of State Historic Preservation Officers, Relative to: Conservation Assistance, see: http://www.nrcs.usda.gov/technical/ECS/culture/PA_31.pdf
- (3) National Environmental Policy Act of 1969 (NEPA), (P.L. 91-190, 83 Stat. 852, 42 U.S.C. 4321, et seq.)
- (4) Executive Order 13007 "American Indian Sacred Sites," May 24, 1996
- (5) Executive Order 13175 "Consultation and Coordination with Indian Tribal Governments," November 6, 2000
- (6) Executive Order 13287 "Preserve America", March 3, 2003
- (7) Archeological and Historic Preservation Act of 1974, (P.L. 93-291, 88 Stat. 174, 16 U.S.C. 469a, et seq.).
- (8) American Indian Religious Freedom Act of 1978 (AIRFA), (P.L. 95-341, 92 Stat. 469, 42 U.S.C. 1996).
- (9) Alaska Native Claims Settlement Act of 1971 (Public Law 92-203).
- (10) Alaska National Interest Lands Conservation Act of 1980 (Public Law 96-487).
- (11) Advisory Council on Historic Preservation: Protection of Historic and Cultural Properties (36 CFR 800).
- (12) The Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act (63 FR 20495) published April 24, 1998, see http://www.cr.nps.gov/hps/fapa_110.htm
- (13) The Secretary of Interior's Standards and Guidelines, Professional Qualification Standards. http://www.cr.nps.gov/local-law/arch_stnds_9.htm
- (14) Archeology and Historic Preservation: The Secretary of the Interior's Standards and Guidelines 1983

(48 FR 44716), as amended and annotated June 18, 2001, see http://www.cr.nps.gov/local-law/arch_stnds_2.htm.

(15) Definitional Policy: "American Indian and Alaska Native Policy of the Natural Resources Conservation Service," June 7, 2000. Outlines establishment of Tribal Conservation Districts and bases for government-to-government relationship with American Indian Tribes.

401.2 Definitions

Terms listed below are used in the discussion of policy principles in the following sections. A full glossary of terms may be found in the **NRCS National Cultural Resources Procedures Handbook** (Title 190, Part 601) and is consistent with definitions found in the Advisory Council on Historic Preservation's regulations for implementation of Section 106 of the NHPA (36 CFR Part 800.16).

- (1) Adverse Effect. The reduction in the characteristics that make an historic property eligible for the National Register of Historic Places. The integrity of the location, design, setting, materials, workmanship, association, or other qualities that are important to defining the National Register eligibility of the historic property is diminished.
- (2) Advisory Council on Historic Preservation (ACHP or Council). The independent Federal agency charged with the responsibility of advising the President, Congress, and Federal agencies on historic preservation policy and reviewing agency programs and activities related to historic and cultural properties. The ACHP was established pursuant to Title II of the National Historic Preservation Act of 1966 (NHPA, 80 Stat. 915, 16 U.S.C. 470) and, with considerable public participation, authored the regulations for implementation of Section 106 of the NHPA. The Council has twenty members, including selected positions from the Cabinet, such as the Secretary of Agriculture. The Council also has support staff in Washington, D.C. who work directly with agencies, State Historic Preservation Officers (SHPOs), Tribes (including THPOs), local governments and members of the public in advising on compliance with Section 106 of the NHPA and other related matters.
- (3) Area of Potential Effect (APE). The geographic area or areas within which an undertaking (project, activity, program or practice) may cause changes in the character or use of any historic properties or cultural resources present.
- (4) Consultation. The legal responsibility of Federal agencies to seek advice, guidance, and counsel from, and confer with authorized parties on program, project, and policy issues. These issues include all matters related to historic preservation and cultural resources compliance. Authorized parties include, but are not limited to, State Historic Preservation Officers, American Indian Tribes, Tribal Historic Preservation Officers, project partners, landowners, the Departmental Consulting Archeologist, the Advisory Council on Historic Preservation and interested members of the public.
- (5) Cultural Resources. Cultural resources are not defined in any of the pertinent legislation however, the term is used throughout the Federal government to refer to historic, aesthetic and

cultural aspects of the human environment (see also the National Environmental Policy Act (NEPA)). In NRCS, the term is sometimes used interchangeably to refer to any historic or archaeological property that has been identified during planning or to refer to "historic properties" as defined by the ACHP regulations. In fact, the term "cultural resources" is not identical to the term "historic properties." See this definition of historic property below.

- (6) Cultural Resources Coordinator (CRC). The NRCS staff member officially designated by the State Conservationist as the point of contact for addressing historic properties, cultural resources, and compliance with the NHPA and related authorities. The CRC is responsible to the State Conservationist for the implementation of cultural resources policies and procedures and for the overall compliance and program activities in NRCS operations. The position is generally collateral to other duties and requires advanced NRCS and ACHP training in historic preservation and cultural resources compliance procedures in order to consult with State and Tribal Historic Preservation Officers staff, the Advisory Council staff, and the public and to work with NRCS' own Cultural Resources Specialist assigned to the State.
- (7) Cultural Resources Specialist. (CRS). An individual (NRCS staff or consultant who works closely with the CRC) who meets the professional education and experience requirements in Archeology and Historic Preservation: The Secretary of the Interior's Standards and Guidelines, Professional Qualification Standards. These requirements include a graduate degree in anthropological archeology, history, cultural anthropology, architectural history, historic architecture or related fields that are most appropriate to the State Office's primary activities. In addition, a cultural resources specialist should have several years of supervised experience and at least one full year of direct cultural resources management experience to perform (or fully supervise a contractor performing) all phases of identification, evaluation, and treatment of cultural resources and/or historic properties.
- (8) Effect. Any action or activity that alters those characteristics of a historic or cultural property that qualify it for inclusion in the National Register of Historic Places. An effect, whether positive or negative, requires Section 106 review and consultation. Effects are determined by applying the ACHP "Criteria of Adverse Effect" found in 36 CFR 800.5(f).
- (9) Evaluation. The application of the National Register of Historic Places eligibility criteria, found at 36 CFR 60.4, to a cultural resource. A professionally trained cultural resources specialist must complete this task for NRCS in consultation with SHPO/THPO or tribal staff. Components of an evaluation may be performed by specifically trained individuals under the direction and guidance of a Cultural Resource Specialist (CRS).
- (10) Federal Preservation Officer. The agency position responsible for coordinating the preservation program or agency-wide historic preservation policy and procedures is the Federal Preservation Officer (FPO). In accordance with Section 110(c) of the NHPA (unless specifically exempted under Section 214 of the NHPA) this position must be established in every agency. An FPO may have other agency duties in addition to historic preservation coordination, depending on the magnitude and degree of the agency's historic preservation activities and responsibilities. [Sec. 110(c)]. Agency officials designated as FPO should have substantial experience administering Federal historic preservation activities and/or specifically assigned staff under their supervision who has such experience. Section 112 of the NHPA

requires that agency personnel or contractors responsible for historic resources meet qualification standards established by the Office of Personnel Management in consultation with the Secretary of Interior.

- (11) Historic Property. Defined by the National Historic Preservation Act and expanded in the ACHP's 36 CFR 800 regulations as: "any prehistoric or historic district, site, building, structure, or object, included on, or eligible for inclusion on the National Register of Historic Places." This term includes artifacts, records and remains that are related to and located within such properties. The term also includes historic and cultural landscapes, properties of traditional and cultural importance to an American Indian Tribe or Native Hawaiian organization and that meet the National Register criteria. The term is often (incorrectly) used interchangeably with "cultural resource."
- (12) Identification. A process of using specific methods or techniques to locate and define the characteristics, nature and extent, including the horizontal and vertical boundaries of cultural resources and historic properties.
- (13) Indian Tribe. Means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as those terms are defined in Section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- (14) Mitigation. Actions or treatments which lessen, eliminate, or compensate for the adverse effects of undertakings to historic properties. These actions may include, but are not limited to:
- (i) Moving the undertaking to avoid effects ("avoidance")
 - (ii) Reducing the extent of the effects by redesigning the undertaking
 - (iii) Compensating for the effects by repairing, rehabilitating, restoring or interpreting (or any combination of these actions) the affected historic properties
 - (iv) Preservation and protection actions during actual implementation of the undertaking
 - (v) Compensating for the effect by moving or documenting the historic property or conducting data recovery.
- (15) National Register of Historic Places (NRHP). The Nation's official list of districts, sites, buildings, structures, and objects which meet the NRHP criteria and are worthy of preservation because of their importance in American history, prehistory, architecture, archeology, and culture. The NRHP is maintained by the Secretary of the Interior under the authority of Section 101 of the National Historic Preservation Act. The criteria are published at 36 CFR 60.1.

- (16) Nationwide Programmatic Agreement (PA) the "Nationwide Programmatic Agreement with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers" provides policy for streamlined compliance with Section 106 of the NHPA and means to develop alternate procedures at the State level. This 10-year agreement was ratified in May 2002.
- (17) Section 106 Process. The series of actions (including continuous consultation, background studies, surveys, resources identifications, assessments and treatments) that implement the section of the National Historic Preservation Act that requires federal agencies to take into account the effects of their undertakings on any cultural resources or historic properties that meet the National Register of Historic Places criteria. Part of this process involves taking action to avoid or minimize harm to eligible resources.
- (18) State Historic Preservation Officer (SHPO). The official who is responsible for administering the NHPA within the State or jurisdiction and is appointed pursuant to Section 101(b)(1) of the NHPA, as amended, or is a designated representative authorized to act for the SHPO. The SHPO is a required consulting party in the Section 106 process; the SHPO does not have an oversight or regulatory role in Section 106 and should not be asked to be the final decisionmaker in the Section 106 process. The SHPO may concur with an agency's documented determination, decline to comment, disagree, or recommend consultation with the ACHP.
- (19) State Level Agreement (SLA). An operating agreement with the SHPO; developed in accordance with Stipulation 2 of the nationwide Programmatic Agreement (PA). When developed under the provisions of and used in conjunction with the nationwide PA, serves as alternate procedures (as defined by the ACHP regulations (see 36 CFR Part 800.14(a)). The SLA(s) are designed to streamline the Section 106 process and are tailored to meet State needs and legal requirements.
- (20) Technical Service Provider (TSP). Is an individual, private business, public agency, or non-profit organization outside of USDA that help agriculture producers apply conservation practices on the land. These TSPs are certified as professionals by NRCS. For cultural resources compliance studies, TSPs function as data collectors and advisors. As with consultants and professional service contractors, NRCS is not authorized to delegate its consultation and findings responsibilities to TSPs.
- (21) Traditional Cultural Properties (TCPs). Properties associated with cultural practices or beliefs of a living community that are rooted in the history of the community, and are important in maintaining the continuing cultural identity of the community. TCPs may be determined eligible for the NRHP, and as such, are considered under the Section 106 process.
- (22) Treatment. Describes the mitigation and/or management procedures and desired outcomes for an historic property or cultural resource, designed to reduce or avoid adverse effects.
- (23) Tribal Consultation Protocol. An operating agreement or procedure with a Tribal government or THPO; developed in accordance with Stipulation 2 of the Nationwide PA. When developed under the provisions of and used in conjunction with the nationwide PA, serves as alternate procedures (as defined by the ACHP regulations (see 36 CFR Part 800.14(a)). The Tribal Consultation Protocol(s) are

designed to streamline the Section 106 process and are tailored to meet State needs and legal requirements.

(24) Tribal Historic Preservation Officer (THPO). The tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act. This official is approved to assume the responsibilities of the SHPO on Tribal Lands by the Secretary of the Interior, National Park Service, under the NHPA. The THPO is a required consulting party in the Section 106 process; the THPO does not have a regulatory role in Section 106 and should not be asked to be the final decisionmaker in the Section 106 process. The THPO may have a regulatory role under tribal law on designated tribal lands.

(25) Tribal Lands. All lands within the exterior boundaries of any Indian reservation and all dependent Indian communities. This definition is consistent with the definition in the NHPA; other statutes use alternate definitions.

(26) Undertaking. Any project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval. Only those undertakings that have the potential to affect historic properties, that can result in changes in the character or use of these properties, if any such historic properties are located in the area of potential effects, and for which NRCS is able to exercise control over the outcomes are subject to review under Section 106 of the NHPA. This determination is either documented in the State Level Agreement and Tribal Consultation Protocols or on a case-by-case basis, as appropriate. In instances where agreements with the SHPO and/or Tribes do not exist, NRCS will comply with the ACHP regulations and assess the effects of each undertaking that has the potential to affect National Register listed or eligible resources. This assessment shall occur in consultation with the SHPO, THPO, appropriate Federally recognized Tribe(s), and other appropriate consulting parties (see 36 CFR Part 800.3).

401.3 Applicability and Exceptions

- A. This part applies to all NRCS programs and activities that may affect historic properties through policies, procedures, or service to the agency's diverse clients. Section 106 of the NHPA (and implementing regulations) requires every Federal agency to take into account the effects of their programs (including assistance programs), actions, and decisions on historic properties (i.e. cultural resources that meet the National Register eligibility criteria) in consultation with the SHPO, THPO, American Indian Tribe, and other consulting parties, as appropriate. NRCS policy found herein and in the nationwide PA is consistent with the NHPA.
- B. Section 110(k) of the NHPA prohibits Federal agencies from providing assistance to an applicant who, with the intent to avoid the requirement of Section 106, significantly adversely affects or destroys historic properties that are in the assistance project's area of potential effect (APE). See 16 U.S.C. 470h-2(k) and 36 CFR Part 800.9(c) for complete discussion. In such cases, NRCS may give the assistance if it determines,

after consultation with the ACHP, that circumstances justify the action despite the effects to the historic property.

- C. In accordance with the NRCS Nationwide Programmatic Agreement (PA), State Level Agreements (SLAs) and Tribal Consultation Protocols may exempt certain conservation practices from Section 106 review. These SLAs and Protocols are subject to review by the ACHP and NRCS FPO. Once the SLAs and Protocols are final, programmatic exemptions listed in the PA also apply within the State.

[GM.420.401.A Amendment 2 - May 2007]

Subpart B - Administrative Responsibilities

401.10 General Agency Responsibilities

In accordance with the National Historic Preservation Act and related statutes and regulations, the Natural Resources Conservation Service is responsible for the identification and evaluation of cultural resources and the protection of historic properties affected by NRCS undertakings. In addition, NRCS will manage the historic properties under its jurisdiction (owned or leased land) in an effort to protect, preserve, rehabilitate, restore, and maintain them.

401.11 Lead Agency Responsibilities

- A. The Natural Resources Conservation Service is responsible for historic preservation and cultural resources compliance in all actions where NRCS is considered the lead agency, i.e., where NRCS has legislated responsibility or designated Department authority to administer specific Federal programs or when providing to nonfederal participants direct, single agency actions of technical and/or financial assistance where we may control the outcome of the assistance.
- B. On Federal or State lands managed by other agencies or participation in multi-agency projects, the lack of lead agency status does not abrogate NRCS responsibility to ensure that cultural resources and historic properties are adequately protected. NRCS shall request copies of or verification that the lead agency involved has met historic preservation and cultural resources compliance requirements.
- (1) When NRCS provides cooperative conservation technical assistance to other Federal agency programs or projects
- (i) NRCS may provide preliminary information, i.e., cultural resources and historic property identification and the recommended conservation alternatives, to the lead agency and participants either separated from or as part of the NRCS program or project planning performed for conservation practices.

- (ii) The lead agency's failure to comply with cultural resources and historic preservation compliance requirements may result in NRCS withdrawal from the action.
- (2) NRCS may provide additional cultural resources assistance to another Federal agency by assuming responsibilities for certain technical cultural resources and historic property identification activities under the following conditions:
 - (i) A formal, written agreement has been executed between NRCS and the agency that references the policy and procedures that are being used, identifies the technical cultural resources activities NRCS will undertake and clearly states if, when and how funds or other resources will be transferred to NRCS to defray expenses or compensate for staff time.
 - (ii) NRCS has advised the SHPO, THPOs, Tribal governments (as appropriate) and ACHP of the agreement and explained NRCS' technical (non-administrative) role.
 - (iii) NRCS does not agree to carry-out administrative compliance activities, such as government-to-government consultation with Tribal governments, and cannot take responsibility for making final decisions regarding evaluation or treatment of historic properties as part of compliance for the other agency.

401.12 NRCS Personnel Responsibilities

A. Chief

The NRCS Chief is the senior Federal official responsible for implementing historic preservation legislation, protecting historic properties in NRCS conservation technical assistance programs, signing documents allowing adverse effects on historic properties when the agency and other consulting parties fail to agree on the terms of treatment. The NRCS Chief shall designate a Senior Policy Official (SFO) Federal Preservation Officer (FPO) for the agency in accordance with Section 110(c) of NHPA.

B. Regional Assistant Chief

The NRCS organization in each of the three regions is headed by a Regional Assistant Chief. Regional Assistant Chiefs are management representatives of the Chief and are responsible for providing overall direction of NRCS programs, policies and activities consistent with the Chief's guidance; acting as representatives of the Chief at meetings; and supervising the State Conservators and the Directors of the Pacific Islands or Caribbean Areas.

C. Senior Policy Official

An NRCS Associate Chief, Deputy Chief, or the equivalent, who has agency-wide policy oversight responsibility for the agency's historic preservation program. This official, or a subordinate employee

reporting directly to the official, shall serve as the agency's Federal Preservation Officer in accordance with section 110(c) of the NHPA.

D. Program Manager

The NRCS employee who is responsible for the fiscal, resource and scientific administration of a conservation program, either at the national or state level.

E. Federal Preservation Officer

The NRCS Federal Preservation Officer (FPO) is the National Cultural Resources Specialist who meets the professional standards for this position set by Section 110 of the National Historic Preservation Act. The FPO is responsible for coordinating NRCS' overall cultural resources and historic preservation policy, procedures, training requirements beyond those specified by the NHPA, and national activities associated with compliance with the National Historic Preservation Act and related authorities. This position is charged with providing policy advice to the Chief, Senior Policy Official, Associate and Deputy Chiefs, the National Headquarters' Divisions, Program Managers, and Centers, and other natural resource disciplinary leaders, and upon request, Regional Assistant Chiefs and State Conservationists (also see definitions).

F. State Conservationist

- (1) Within each State or Area, the NRCS State Conservationist is the senior Federal official responsible for cultural resources and historic preservation compliance and the protection of historic properties in all NRCS activities. The State Conservationist shall designate a Cultural Resources Coordinator (CRC) to carry out the cultural resources administrative responsibilities, and will ensure that the State office has on staff or has regular and continuing access to a qualified Cultural Resources Specialist (CRS). All new and continuing CRCs and CRSs must complete the NRCS web-based modular Cultural Resources Training (modules 1-6), the classroom and field modules (modules 7 and 8) and modules 1-8 of the Conservation Planning Training within the first six months of their tenure and take the ACHP Section 106 basic and advanced training as soon after their appointment as the State budget permits.
- (2) The State Conservationist is also responsible for providing historic properties information, guidance, and education programs for NRCS personnel within the State and for interested partners. The State Conservationist takes the lead in developing and executing both a State Level Agreement (SLA) with the State Historic Preservation Officer (SHPO) and Consultation Protocols with American Indian Tribal governments in accordance with the nationwide "Programmatic Agreement Among the United States Department of Agriculture Natural Resources Conservation Service, The Advisory Council on Historic Preservation and The National Conference of State Historic Preservation Officers for Conservation Assistance" (PA).
- (3) The State Conservationist ensures that field personnel who work with NRCS cultural resources specialists in implementing Section 106 compliance responsibilities, receive up-to-date NRCS modular (web-based and field) cultural resources training and, as appropriate, external training, to, at a

minimum, permit these individuals to determine if an action or practice is an undertaking that has the potential to affect historic properties and to recognize physical evidence of cultural resources in the field.

G. Cultural Resources Coordinator (CRC)

The person is officially designated by the State Conservationist to act as a liaison responsible for the daily functioning of the cultural resources compliance activities. The CRC serves as the knowledgeable liaison among NRCS, SHPO, ACHP, and historic preservation professionals and provides assistance and information to the field offices. The responsibilities of the CRC are described in Part D, Subpart 401.42, "Cultural Resources Specialist and Coordinator Qualifications and Duties". Because of their duties, all CRCs receive advanced training in cultural resources management and law—at a minimum, all new and continuing CRCs must complete the NRCS web-based and field-based modular training within the first six months of their tenure (the field modules taken in an adjacent or nearby state that has a CRS on staff) and take the ACHP Section 106 basic and advanced training as soon after their appointment as the State budget permits. The CRC is charged with ensuring that all field personnel working in any manner with Section 106 compliance complete the NRCS web-based and field modules before they carry-out their historic preservation responsibilities.

H. Area and District Conservationist

Within each area and conservation district or field office service area, the persons responsible for ensuring that the provisions of this part are implemented in coordination with the State CRC and CRS. If appropriate and with sufficient specialized cultural resources training approved by the State Conservationist, Area and District Cultural Resources Coordinators or Specialists may be designated to facilitate assistance and back-up the CRC and CRS.

I. Cultural Resources Specialist (CRS)

These are individuals who meet the Professional Qualification Standards established by the Secretary of the Interior (SOI) pursuant to the NHPA (Section 112(a)(1)(B), 12 U.S.C. 470-4(a)) and the Office of Personnel Management. They are responsible for providing technical, scientific and procedural guidance for considering and managing cultural resources and historic properties within their state or jurisdiction. They also conduct cultural resources and historic property investigations, evaluations, and develop treatment plans for mitigation. The responsibilities of the CRS are further described in Part D, Subpart 401.42 Cultural Resources Specialist and Coordinator Qualifications and Duties. Because of their duties, all CRSs must receive advanced training in cultural resources management and law—at a minimum, all new and continuing CRSs must complete the NRCS web-based modular training within the first six months of their tenure (including the field modules taken from a CRS in an adjacent or nearby state) and take the ACHP Section 106 basic and advanced training as soon after their appointment as the State budget permits. The CRS is charged with working with the CRC in ensuring that all field personnel working in any manner with Section 106 compliance complete the NRCS web-based and field modules before they carry-out their historic preservation responsibilities. The CRSs also are charged with designing in accordance with NRCS requirements outlined in AgLearn and presenting the field-based training modules to State and field staff and partners, generally in

collaboration with SHPO staff and THPOS.

401.13 Advisory Council on Historic Preservation (AChP) Responsibilities

The AChP is an independent Federal agency established by Title II of the National Historic Preservation Act to advise the President and Congress on historic preservation matters. Among other things, the Council administers implementation of Section 106 of the National Historic Preservation Act through its regulations (36 CFR 800). The law directs Federal agencies to "take into account" the effects of their undertakings on properties listed in or eligible for inclusion in the National Register of Historic Places and to afford the Council a reasonable opportunity to comment with regard to such undertakings. The Council may provide technical advice and assistance to NRCS, State and Tribal Historic Preservation Officers and Indian Tribes. The Council also serves to monitor activities, participate in formal review and consultation, and help ensure that members of the public and other interested parties are provided an opportunity to participate in the planning, consultation, and decision-making process.

401.14 State Historic Preservation Officer (SHPO) Responsibilities

A. The State Official appointed by the Governor to administer the programs of the National Historic Preservation Act for that State. By federal law, the SHPO is charged to:

- (1) In cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties;
- (2) Identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;
- (3) Prepare and implement a comprehensive statewide historic preservation plan;
- (4) Administer the State program of Federal assistance for historic preservation within the State;
- (5) Advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;
- (6) Cooperate with the Secretary of the Interior, the Advisory Council on Historic Preservation, and other Federal and State agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning; and
- (7) Provide public information, and education and training, and technical assistance in historic preservation.

- B. The SHPO may be assigned additional duties and responsibilities based on state legislation requiring individual NRCS State Offices to supplement the national policy (i.e. permits, reporting requirements) or address those in SLAs.

401.15 Tribal Historic Preservation Officer

- A. The tribal official appointed by the tribe's chief governing authority or designated by tribal ordinance or preservation program to carry out the responsibilities of the SHPO for Section 106 compliance on tribal lands (in accordance with Section 101(d)(2) of the NHPA). The THPO also may administer the Tribal Historic Preservation Program, including:
- (1) In cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive survey of Historic properties and maintain inventories of such properties;
 - (2) Identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;
 - (3) Prepare and implement a comprehensive historic preservation plan;
 - (4) Administer the program of Federal assistance for historic preservation;
 - (5) Advise and assist, as appropriate, Federal, Tribal, and State agencies and local governments in carrying out their historic preservation responsibilities;
 - (6) Cooperate with the Secretary of the Interior, the Advisory Council on Historic Preservation, and other Federal and State agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;
 - (7) Provide public information, education and training, and technical assistance in historic preservation;
 - (8) Cooperate with local governments in the development of local historic preservation programs;
 - (9) Consult with appropriate Federal agencies in accordance with the National Historic Preservation Act on Federal undertakings that may affect historic properties; the content and sufficiency of any plans developed to protect, manage, or to mitigate harm to such properties; and advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance.
- B. The THPO may be assigned additional duties and responsibilities based on Tribal law requiring individual NRCS State Offices to supplement the national policy (i.e. permits, reporting requirements) or address those in Tribal Protocol Agreements..

401.16 American Indian Tribes without THPOS

Federally recognized American Indian tribes may elect to consult with NRCS on its programs, projects and other undertakings. This is covered in more detail in Subpart C, Policy, Section 401.21, Considering Cultural Resources in NRCS Programs and Activities and Subpart D, Section 401.41, Consultation with American Indian Tribes.

[GM.420.401.B Amendment 2 - May 2007]

Subpart C – Policy

401.20 General Policy

- A. NRCS recognizes that cultural resources, including historic properties, are an integral part of our national heritage and recognizes its responsibilities for historic preservation, particularly for properties listed on or eligible for listing on the National Register of Historic Places. Further, the National Historic Preservation Act of 1966, as amended, mandates that all Federal agencies must take into account the effects of their undertakings on these historic properties.
- B. NRCS shall ensure that cultural resources and historic properties are considered in all NRCS actions and programs. Furthermore, the conservation mission of NRCS is in harmony with the requirements of Sections 110 and 112 of NHPA. Those sections mandate and authorize each Federal agency to develop a preservation program and become an active participant in the stewardship of our Nation's historic properties. Under the provisions of those sections, NRCS shall promote the conservation and protection of historic properties.
- C. NRCS shall identify cultural resources and historic properties early in the NRCS planning and environmental review processes for all assistance activities classified as undertakings that have the potential to affect historic properties.

401.21 Considering Cultural Resources in NRCS Programs and Activities

- A. NRCS shall fulfill NHPA Section 106 requirements in accordance with the ACHP implementing regulations, 36 CFR 800, or the nationwide PA, executed under 36 CFR 800.14(a). This PA, when implemented by the State Conservationists with State Level Agreements (SLA) and Tribal Consultation Protocols serves as alternate procedures to the ACHP regulations (i.e. substitutes for all or part of Subpart B of the regulations) pursuant to 800.14(a) and Section 110(a)(2)(E) of the NHPA. NRCS shall also follow procedures set forth in the NRCS National Cultural Resources Procedures Handbook.
- B. The nationwide PA provides for a streamlined Section 106 process appropriate for conservation technical

assistance, financial assistance, and other activities. Under the PA, State Conservatists are required to take steps to negotiate and execute State Level Agreements with their SHPO and to take steps to develop consultation protocols with Indian Tribes.

C. With or without the PA in place, in order to consider cultural resources during project and program planning:

- (1) NRCS will determine if a proposed undertaking has the potential to affect historic properties.
- (2) NRCS will initiate consultation with the SHPO/THPO, American Indian Tribes and other consulting parties if the State Conservatist (upon the advice of the State Cultural Resources Specialist or Coordinator) determines that the undertaking has the potential to affect cultural resources, including historic properties, listed in or that might meet the criteria for listing in the National Register of Historic Places.
- (3) NRCS shall initiate consideration of historic properties as early in the planning as practical to identify and define which properties or other important cultural resources require additional consideration.
- (4) NRCS shall ensure that initial identification of cultural resources, including historic properties, will be conducted by qualified Cultural Resources Specialists (CRS), trained NRCS personnel, or trained conservation partners, in consultation with SHPOS, THPOs, Indian Tribes, and other identified consulting parties, as appropriate.
- (5) NRCS shall ensure that if identified cultural resources, cannot be avoided and may be affected by a proposed undertaking, a CRS will evaluate the identified property against the National Register Eligibility criteria in consultation with the SHPO/THPO/Tribes. This evaluation must completely delineate the boundaries of the identified property. If NRCS and the SHPO/THPO/Tribes cannot agree on whether identified cultural resources are eligible (meet National Register criteria) as historic properties, then NRCS must submit a formal request for a determination of eligibility to the Keeper of the National Register in the National Park Service. The Keeper's decision on eligibility is final.

401.22 Adverse Effects

It is the policy of NRCS to protect cultural resources in situ to the fullest extent possible. If an undertaking has been determined to have an adverse effect on an historic property as outlined in 36 CFR 800.5, NRCS will undertake treatment measures as described in the National Cultural Resources Procedures Handbook. If adverse effects to an historic property cannot be avoided and treatment alternatives cannot be implemented, NRCS will consider:

- (1) Withdrawing all assistance from the specific undertaking; or
- (2) Proceeding with the adverse effects due to special circumstances. NRCS will follow ACHP

regulations (36 CFR 800.7) and NRCS' steps in the National Cultural Resources Procedures Handbook (601.26, Failure to Resolve Adverse Effects).

401.23 Withdrawal of NRCS Assistance

Any decision to withdraw NRCS assistance shall be made by the State Conservationist. The reasons why the State Conservationist may make this decision are as follows:

- (1) NRCS may withdraw assistance from a participant when it is determined by the State Conservationist that the cost or other factors involved with cultural resource compliance jeopardize the feasibility of an undertaking.
 - (2) NRCS may withdraw assistance if a participant, after application to NRCS:
 - (i) Intentionally carries out an irreversible action associated with requested technical or financial assistance that adversely impacts a cultural resource prior to completion of NRCS compliance responsibilities (see Section 110(k) of the NHPA), or
 - (ii) Refuses to permit implementation of a recommended mitigation plan.
 - (3) All NRCS actions pertaining to the withdrawal of assistance because of cultural resources shall be approved by the State Conservationist and fully documented, in accordance with the NRCS National Cultural Resources Procedures Handbook (601.27).

401.24 Post-review Discovery

When other pertinent procedures of this part have been completed and a previously unknown cultural resource is discovered, an unevaluated cultural resource will be affected, or it is determined that known cultural resources will be affected in a previously unanticipated manner by the NRCS assisted undertaking, NRCS will protect the resource from further damage to the fullest extent possible and follow procedures for discoveries as described in the ACHP Regulations (36 CFR 800.13) and the NRCS National Cultural Resources Procedures Handbook.

401.25 Emergency Work

- A. This section considers cultural resources affected by emergency work carried out by NRCS in the Emergency Watershed Program or as lead agency in accordance with the National Response Plan (NRP). Preservation of human life and property shall be the priority concern and focus of the emergency measures while taking into account the effects on cultural resources to the fullest extent practicable.
- B. State Level Agreements and Tribal Protocols shall contain emergency provisions consistent with the NRCS

Nationwide PA (Stipulation 2.A.(7) and B.(8)). When no SLA or Tribal Protocols exist, procedures outlined in the NRCS National Cultural Resources Procedures handbook shall be followed.

- C. The State Conservationist may elect to either follow NRCS procedures (and those derived under state agreements); ACHP regulations; or have the NRCS Chief or designee request an emergency waiver under 36 CFR 78 as an alternative for dealing with disasters of major scale. In this case NRCS will either develop an appropriate plan consistent with 36 CFR Part 78 or execute a programmatic agreement with ACHP for considering historic properties.

401.26 Training of NRCS Personnel and Partners

- A. NRCS will provide basic awareness training and informational materials to field personnel and partners and other interested parties that outline NRCS' responsibilities and procedures for considering cultural resources and historic properties in accordance with Section 106 of the National Historic Preservation Act, 36 CFR 800 implementing regulations, the nationwide PA and State Level Agreements and State Tribal Consultation protocols and agreements.
- B. All NRCS employees responsible for planning or implementing NRCS programs shall complete NRCS' web-based, classroom and field cultural resources training modules (modules 1-8). Additional training may be required to ensure appropriate consideration of historic properties in the performance of official duties. Further guidance on standards for employee training is listed in the **National Cultural Resources Procedures Handbook** and in this part, Section 401.14, NRCS Personnel Responsibilities. Additional information on completion of the NRCS training may be obtained through the State Training Officer or AgLearn.
- C. Technical Service Providers who are to carry out cultural resources compliance studies or the cultural resources portions of conservation planning, will complete the same training as NRCS employees (see the TechReg Web site <http://techreg.usda.gov/>).

401.27 Funding for Cultural Resources Compliance

State Conservationists, consistent with NRCS Programs policy and in consultation with the National and State Program Managers, are responsible for deciding when CTA, TA or FA funds are to be used for complying with Section 106.

401.28 Access to Cultural Resources Specialists

Each State Office shall have available on staff or have regular and continuing access to a qualified Cultural Resources Specialist. Regular and continuing access is defined as being able to obtain expert advice and opinion from an assigned specialist to ensure that conservation technical assistance is not delayed and that cultural resources are not adversely impacted. Specialist oversight may be obtained through direct hire with single or multistate coverage as worked out between States Conservationists; open-ended (indefinite quantity

indefinite delivery) contracts for services as required; or cooperative agreements with other agencies or institutions. Technical Service Providers (TSPs) and professional service contracts may be used to carry-out project-specific work but not to provide the Cultural Resources Specialist long-term oversight and guidance for the State.

401.29 Deferring Identification and Evaluation of Cultural Resources

NRCS' policy is to identify and evaluate cultural resources as early as possible during the planning process. This policy is consistent with the Section 106 and Section 110 (a) and (f) of the NHPA. There are rare instances when this is not possible and cultural resources compliance identification activities must be deferred or phased (including the use of monitoring during construction). The instances when this is acceptable and the procedures that must be followed are found in the ACHP regulations (36 CFR 800.4(b)(2)). Such deferral may require negotiation and execution of a memorandum of agreement pursuant to 36 CFR 800.6.

401.30 Compliance Documentation and Reporting Cultural Resources

- A. Compliance Documentation. For the purposes of management continuity, monitoring, and reduction of work duplication, all NRCS field offices shall keep records of their cultural resources decisions, including supporting data. A record of all cultural resources agreements and communications with SHPO, THPO, ACHP, participants, or other relevant parties concerning NRCS undertakings should be maintained at the State Office.
- B. Reporting. NRCS shall report on cultural resources identification studies and cultural resources and historic properties found within the APE to the SHPO/THPO/Tribe. Such reports shall explain and describe the survey methodologies used, field and analytical recording methods employed, the findings, and recommendations. The amount, content, and frequency of reporting such cultural resources information for the APE shall be determined in consultation with the SHPO/THPO/Tribe and incorporate any requirements of state or Tribal law, state or tribal agreements, and resource security.
- C. Documentation standards are outlined in the ACHP regulations (36 CFR 800.11) and supplemental ACHP guidance. NRCS must follow these standards in its Section 106 compliance work. NRCS shall document and report cultural resources in the following manner:
 - (1) Cultural resources identified outside the APE may be documented either in the NRCS Field Office producer file or with the SHPO/THPO/Tribe. This documentation is not required but is encouraged in order to facilitate decisions regarding protection of cultural resources and avoid the duplication of identification efforts.
 - (2) If a cultural resource within the APE can be avoided, NRCS shall provide documentation and effect determination (i.e. No Adverse Effect) to the SHPO/THPO/Tribe and landowner. If the SHPO/THPO/Tribe does not respond within 30 days, NRCS will continue assistance. NRCS may request shorter SHPO/THPO/Tribal review periods on an individual basis or through state-level agreements/Tribal protocols.

- (3) If a historic property cannot be avoided NRCS, in consultation with all consulting parties, will develop a mitigation plan.

401.31 Access To Data and Reports

- A. Historic property data shall be protected. Access is appropriate for planning by NRCS, or other planners, and the landowner. Section 304 of the NHPA provides that the head of a Federal agency, after consulting with the Secretary of Interior, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners.

- B. Other issues of confidentiality and data access can be found in 36 CFR 800.11(c) and sections 601.41 and 601.42 of the NRCS National Cultural Resources Procedures Handbook.

401.32 Ethical Conduct on the Collection and Use of Information

During cultural resources investigations, NRCS employees are required to conduct themselves in a professional manner, i.e., using cultural resources objects and remains and information as follows:

- (1) NRCS employees (other than Cultural Resources Specialists) shall not collect artifacts or other cultural items while on official duty except during the course of compliance studies when directed by a specialist or as defined in state supplements or agreements with the SHPO/THPO and with permission of the participant or Federal/state land manager.

- (2) NRCS employees shall use cultural resources information gained on the job only for official purposes or professional study. They shall always follow NRCS policy for reporting studies and finds and for confidentiality and privacy.

- (3) See also NRCS Ethics Chapter of the General Manual Title 110 Part 405 and Section 112 of the NHPA.

401.33 Ownership and Curation of Artifacts and Collections

- (1) When archeological or historic material remains are recovered during the course of NRCS activities on Federal or Indian lands, recovered materials are the property of the landowner (individual, Tribe, government agency, community). When such materials are recovered from lands administered by a state or municipal agency or other public entity, the recovered materials are the property of that agency or entity. When archeological or historic material remains are recovered from privately owned lands (nonfederal, and/or not tribally owned), recovered materials are the property of the landowner(s) unless state or local laws require otherwise. When archeological or historic material remains are recovered from Tribal lands as defined herein, recovered materials are the property of the Tribal government in accordance with tribal law. Curation of materials from Federal, Tribal, state, or municipally administered lands is the responsibility of the landowner

(s). NRCS shall encourage the owner of recovered material remains from private lands to donate them to an appropriate curatorial facility. If human remains are recovered and have not been repatriated in accordance with State, local or tribal law, NRCS shall encourage donation to the appropriate parties (in accordance with ACHP policy).

(2) On lands owned, managed, leased, or otherwise directly controlled by NRCS (such as some Plant Materials Centers), NRCS is responsible for the curation of recovered cultural materials. All recovered materials and records will be curated at appropriate curatorial facilities to the standards found in 36 CFR 79.

(3) If materials are recovered during the course of an NRCS sponsored or assisted data recovery effort, the NRCS will ensure that appropriate analyses of all recovered materials are complete (as state, tribal or local law permit) prior to returning them to the owners. Associated records that are prepared or assembled in connection with a federally authorized cultural resources survey, excavation, or other study, regardless of the location of the resource, become the property of NRCS. Copies of all records shall be made to accompany all collections.

(4) Treatment of burials and other human remains shall follow the process(es) outlined in applicable Federal, Tribal, state, or local law and/or ACHP policy. All human remains shall be treated with respect.

401.34 State Supplements

This section is reserved for State Conservators to add any required state or tribal laws or regulations which may affect how cultural resources are considered during the planning of agency undertakings. Please see guidance provided in Part 401.43 below.

401.35 Cultural Resources Beyond Section 106

- A. Many of NRCS programs allow for the treatment, interpretation, and protection of historic properties. This includes assistance, easement, and cost-share programs. Refer to individual program policies and manuals for further guidance.
- B. NRCS State Offices are encouraged to work with outside organizations and other agencies which can assist in the protection of cultural resources on private lands on which NRCS may give assistance. These groups include the National Trust for Historic Preservation and the Advisory Council's Preserve America Program.

[IGM.420.401.C Amendment 2 - May 2007]

Subpart D - Coordination With Other Authorities and Responsibilities

401.40 Coordination with the National Environmental Policy Act (NEPA)

- (1) Early Coordination. NRCS will coordinate compliance with Section 106 of the NHPA with procedures to comply with the National Environmental Policy Act (see GM 190, Part 410). When coordinating Section 106 compliance with NEPA, NRCS will follow guidance set forth in the 36 CFR 800.8, "Coordination with the National Environmental Policy Act."

(i) The NEPA documents including NRCS' Environmental Evaluation Sheet (EE Sheet, CPA-52), Environmental Assessments /Findings of No Significant Impacts (EAs/FONSI's) or Environmental Impact Statements /Records of Decision (EISSs/RODs) require explanation and documentation of the level of Section 106 compliance already completed and scheduled for completion prior to implementation of the proposed project.

(ii) Section 106 compliance must start early in the NEPA planning process. NRCS will, whenever feasible, plan public participation, analysis, and review of public comment in such a way that they meet the purposes and requirements of both statutes.

(2) Scoping. NEPA planning includes appropriate scoping, identification of historic properties (in addition to other resources), and assessment of effects, and consultation (with all appropriate participants, including SHPOs, Tribes and partners) leading to resolution of adverse effects in accordance with memoranda of agreement, treatment plans, or other cultural resources and NEPA planning documents.

(3) Documentation. NEPA planning documents record Section 106 compliance planning activities but do not necessarily include information on all of the required consultations, Section 106 technical and resource documents, correspondence, and records of research and consultations.

401.41 Consultation with American Indian Tribes

Consultation with American Indian tribal governments and Tribal Historic Preservation Officers is to be carried-out in accordance with Section 106 of the NHPA and implementing regulations, related authorities on consultation, and policy principles found in GM 410 Part 405, **American Indians and Native Alaskans**, and guidance outlined in the **National Cultural Resources Procedures Handbook**. The authorities include:

- (1) USDA Department Regulation 1340-6, Policies on American Indians and Alaska Natives, October 16, 1992.
- (2) Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, November 6, 2000.
- (3) Executive Order 13270, Tribal Colleges and Universities, July 3, 2002.
- (4) Public Law 89-665, October 15, 1966, 16 U.S. C. 470, et seq. (National Historic Preservation Act

and its 22 amendments, and implementing regulations for Section 106 of the Act, 36 CFR Part 800), especially regarding special the consultation role of American Indian Tribes, Tribal Historic Preservation Officers and Native Hawaiian Organizations.

(5) Executive Order 13007, Indian Sacred Sites, May 24, 1996.

(6) Nationwide Programmatic Agreement among the United States Department of Agriculture Natural Resources Conservation Service, Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers, May 31, 2002 (NRCS A-3A75-2-64), especially regarding government-to-government negotiation of tribal cultural resources consultation protocols.

401.42 Cultural Resources Specialist and Coordinator Qualifications and Duties

(1) Cultural Resources Specialist Qualifications:

Cultural Resources Specialists used by NRCS must meet minimum OPM education requirements and commensurate experience or the qualifications outlined in the Secretary of the Interior's Qualification Standards listed in the National Cultural Resources Procedures Handbook; see also Section 112(b) of the NHPA.

(2) Cultural Resources Specialist Principal Duties

Cultural Resources Specialists are to, upon request, provide advice to the State Conservationist and principal staff, provide assistance in determinations of significance, consulting with SHPOs/THPOs on National Register of Historic Places eligibility, oversight for reviews of NRCS undertakings, field surveys, guidance for field personnel on identification and avoidance, compliance documentation for SHPO/THPO, training, and quality assurance and/or control reviews. Specialists may also serve as the Cultural Resources Coordinator and provide assistance to the contracting officer on cultural resources projects (see CRC duties below). If the CRS is not an NRCS employee (i.e. contractor or TSP) all formal findings, decisions, and consultation with SHPO/THPO and Tribes must be made by NRCS.

(3) Cultural Resources Coordinator Principal Duties

The State Conservationist designates a Cultural Resources Coordinator (CRC) to oversee the cultural resources activities in each state. The CRC is the principal coordinator of administrative and procedural matters associated with cultural resources. Coordination may be accomplished by a cultural resources specialist if the specialist is on the staff, and thus the coordinator and specialist may be the same person. In the absence of a specialist on the NRCS staff, and even with a specialist on staff, the duties may be effectively divided between technical matters done by the specialist and coordination of non-technical, administrative and many procedural actions done by the CRC.

- (4) The CRC:
- (i) Advises the State Conservationist on staffing, training, and cultural resources compliance needs and implementation barriers to ensure that NRCS can carry out its legal responsibilities.
 - (ii) Develops, maintains, and makes available to NRCS staff and partners up-to-date reference files of national, state, and local laws, regulations, standards, guidelines, authorities and other materials relevant to NRCS cultural resources responsibilities.
 - (iii) Coordinates consultation and other cultural resources activities with other NRCS offices, the State Historic Preservation Officer, American Indian Tribes, National Park Service, the Advisory Council on Historic Preservation, other Federal and State agencies, and NRCS clients.
 - (iv) Creates and maintains cultural resources data and information files and makes them available to NRCS staff, as appropriate and permitted under the law, for planning purposes.
 - (v) Inputs or oversees input of cultural resources compliance information in NRCS' Performance Results System (PRS) and other NRCS performance tracking systems, compiles State office information for the annual national report of NRCS cultural resources activities and provides these data to national headquarters on schedule.
 - (vi) With the direct guidance from a cultural resources specialist, the CRC may assist with:
 - Design and delivery of technical aspects of NRCS cultural resources training;
 - Literature review, records checks, field inspections, and minor technical aspects of limited survey activity;
 - Preparation of technical specifications for contracts and agreements or may act as the Contracting Officer's Technical Representative (COTR) or Contracting Officer's Representative (COR);
 - (vii) Reviews technical reports to ensure that essential administrative and technical information is present;
 - (viii) Preparation of documentation of compliance with this part and with the cultural resources sections of NRCS plans and other pertinent documents.
- If the CRC is not a cultural resources specialist, the CRC may coordinate or assist with other cultural resources activities as agreed to with the SHPO in specific cases or as agreed to in state agreements between NRCS and the SHPO.
- 401.43 Guidance for Executing Agreements and State Supplements**

The scope, purpose, and type of agreements concerning cultural resources are diverse. Agreements improve the efficiency of carrying out NRCS responsibilities, minimizing delays of NRCS assistance. Agreements may be international, national, multistate, or for each specific state in order to implement stewardship through NRCS programs or to carry out NRCS responsibilities in individual or multiple undertakings.

(1) National and Multi-State Agreements

(i) NRCS may request execution of a programmatic agreement with the ACHP for a particular program or class of undertakings that would otherwise require numerous individual requests for comments under this part or the ACHP regulations (36 CFR 800). Such agreements will be developed in accordance with 36 CFR 800 and shall include the National Conference of State Historic Preservation Officers (NCSHPO) or multiple SHPOs involved as parties to the agreement.

(ii) National and multi-stated agreements may also be necessary for stewardship activities not centrally related to the Section 106 process, such as policy or resource studies that do not affect historic properties or other cultural resources but contribute to the general purposes of the National Historic Preservation Act. These agreements shall include as signatories all parties that will substantially contribute to the activity, such as the ACHP, other federal agencies, Individual Tribal governments or groups, the National Conference of State Historic Preservation Officers, or others as appropriate.

(2) State Level Agreements (SLAs)

These agreements are developed and operated at the state level to facilitate NRCS actions. The minimum and suggested contents address items that vary greatly between states and across program lines within individual states. The State Conservationist shall negotiate an agreement subordinate to this with the SHPO. The nationwide PA lists items that should be included in every agreement. Copies of the signed SLAs shall be sent to the National Cultural Resources Specialist in the Ecological Sciences Division for review and comment and transfer to the ACHP for their review. All reviews and suggestions for modifications will be complete within 30 days of receipt of the SLA by the ACHP. If no comments are returned to the State Office within these 30 days, the SLA is filed as final.

(3) American Indian Tribal Consultation Protocols or Agreements.

NRCS State Offices shall consult with THPOs and the governments of Federally recognized Indian Tribes that do not have designated THPOs in order to attempt to establish consultation protocols, procedures or agreements regarding undertakings on tribal lands and lands which a tribe holds as traditionally or culturally important under Section 101(d)(6). Discussions in developing consultation protocols shall be government-to-government and direct, in person, and otherwise initiated in an appropriate and respectful manner for each individual Tribal government. More information on consultation protocols may be found in the nationwide PA and Cultural Resources Procedures Handbook. Copies of the signed protocols shall be sent to

the National Cultural Resources Specialist in the Ecological Sciences Division for review and comment and transfer to the ACHP staff for their review. All reviews and suggestions for modifications will be completed within 30 days of receipt of the SLA by the ACHP. If no comments are returned to the State Office within these 30 days, the signed protocol is filed as final.

(4) Agreements of less than national scope for Section 106 compliance.

NRCS State Offices may develop a memorandum of agreement with the ACHP, SHPO, THPO, Indian Tribe(s) and/or other partners for completion of a large, complex, or lengthy undertaking. State Offices may develop programmatic agreements with the ACHP, SHPO, THPO, Indian Tribe and other consulting parties for programs or classes of undertakings, as appropriate, in accordance with the ACHP regulations (36 CFR 800). Such agreements may involve more than one state.

(5) State Supplements to the General Manual

- (i) State policy on cultural resources matters must be established and implemented by means of supplements to this part.
- (ii) Draft copies of state supplements to this part will be sent to the National Cultural Resources Specialist (Federal Preservation Officer) for review before they are issued.
- (iii) Copies of final state supplements, technical notes, and guidelines relating to cultural resources state agreements will be sent to the NRCS Federal Preservation Officer for central records.

[GM.420.401.D Amendment 2 - May 2007]

Attachment 3
Classification of Conservation Practice
Effects on Historic Properties

The following listing of conservation practices indicates the potential of each practice to have an adverse effect on historic properties (cultural resources that are considered eligible for the National Register of Historic Places) if any are present in the area of potential effects. The classification categories are as follows:

Conservation practices with the potential to affect historic properties are listed as ground disturbing (G).

Some conservation practices have a high potential to affect historic properties when installed according to standard NRCS criteria. As a result, the NRCS shall identify any historic properties within the area of potential effects and determine the effect of the practice on them.

Conservation practices with the potential to affect historic properties except when non-intrusive are listed as potentially ground disturbing (PG).

Some conservation practices may affect historic properties unless they are installed under two different situations:

1. The installation of the practice will not exceed the depth, extent, or kind of previous cultivation; or
2. The installation of the practice will be in areas of the land that have not been previously cultivated but will not involve ground disturbance.

If either of these situations apply the conservation practice is exempt from further consideration of cultural resources since the undertaking does not have the potential to affect historic properties.

Conservation practices without the potential to affect historic properties are listed as not ground disturbing (NG).

Some conservation practices are primarily management related and will not affect historic properties. Such practices are exempt from further consideration of historic properties.

The following table should be consulted to determine if a conservation practice is exempt from further consideration of historic properties. If a conservation practice is rated as "Not Ground Disturbing" (NG), then no further consideration of historic properties is necessary. If a conservation practice is rated as "Potentially Ground Disturbing" (PG) or "Ground Disturbing" (G), then additional consideration of historic properties is required as outlined in the State Level Agreement.

Ground Disturbing Potential for Conservation Practices (rev. 2007)

Code	Practice Name	Rating
560	Access Road G	
702	Agricultural Handling Facility	G
311	Alley Cropping	PG
365	Anaerobic Digester Ambient Temperature	PG
366	Anaerobic Digester Controlled Temperature	PG
316	Animal Mortality Facility	G
575	Animal Trails and Walkways	PG
450	Anionic Polyacrylamide (PAM)	NG
370	Atmospheric Resources Quality Management	NG
397	Aquaculture Ponds	G
314	Brush Management	PG
584	Channel Stabilization	PG
326	Clearing and Snagging	PG
360	Closure of Waste Impoundments	PG
317	Composting Facility	G
327	Conservation Cover	PG
328	Conservation Crop Rotation	NG
716	Conservation Power Plant INTERIM STANDARD	PG
716	Conservation Power Plant INTERIM SPECIFICATION	PG
656	Constructed Wetland	G
332	Contour Buffer Strips	PG
	For Sodbust	G
330	Contour Farming	NG
340	Cover Crop	PG
342	Critical Area Planting	PG
	With Land Leveling	G
589A	Cross Wind Ridges	PG
589C	Cross Wind Trap Strips	PG
589c	Cross Wind Trap Strips INTERIM SPECIFICATION	PG
348	Dams, Diversion	G
402	Dam	G
324	Deep Tillage	PG
356	Dike	G
362	Diversion	G
554	Drainage Water Management	PG
432	Dry Hydrant	PG
647	Early Successional Habitat Development/ Management	PG

Legend:

- | | |
|----|-------------------------------|
| G | Ground Disturbing |
| PG | Potentially Ground Disturbing |
| NG | Not Ground Disturbing |

Code	Practice Name	Rating
592	Feed Management	NG
382	Fence	PG
386	Corner posts and posts requiring post hole digging	G
393	Field Border	PG
394	Filter Strip	PG
394	Firebreak	PG
396	Fish Passage	PG
399	Fishpond Management	PG
398	Fish Raceway or Tank	PG
511	Forage Harvest Management	NG
490	Forest Site Preparation	PG
666	Forest Stand Improvement	NG
655	Forest Trails and Landings	PG
410	Grade Stabilization Structure	G
412	Grassed Waterway	PG
548	Grazing Land Mechanical Treatment	PG
561	Heavy Use Area Protection	PG
422	Hedgerow Planting	PG
603	Herbaceous Wind Barriers	PG
320	Irrigation Canal or Lateral	G
388	Irrigation Field Ditch	PG
464	Irrigation Land Leveling	G
552	Irrigation Regulating Reservoir	G
436	Irrigation Storage Reservoir	G
441	Irrigation System, Micro Irrigation	PG
442	Irrigation System, Sprinkler	PG
443	Irrigation System, Surface and Subsurface	PG
447	Irrigation System, Tailwater Recovery	G
754	Irrigation Water Conveyance, Anionic Polyacrylamide Ditch and Canal Treatment	NG
430-AA	Irrigation Water Conveyance, Aluminum Tubing Pipeline	G
430-III	Irrigation Water Conveyance, Corrugated Metal Pipeline	G
430-JJ	Irrigation Water Conveyance, Corrugated Ribbed or Profile Wall Thermoplastic	G
428A	Irrigation Water Conveyance, Ditch & Canal Lining, Plain Concrete	G

Legend:

- | | |
|----|-------------------------------|
| G | Ground Disturbing |
| PG | Potentially Ground Disturbing |
| NG | Not Ground Disturbing |

Code	Practice Name	Rating
428B	Irrigation Water Conveyance, Ditch & Canal Lining, Flexible Membrane	G
428C	Irrigation Water Conveyance, Ditch & Canal Lining, Galvanized Steel	G
430DD	Irrigation Water Conveyance, High-Pressure Underground Plastic Pipeline	G
430EE	Irrigation Water Conveyance, Low Pressure, Underground, Plastic Pipeline	G
430CC	Irrigation Water Conveyance, Non-reinforced Concrete Pipeline	G
430GG	Irrigation Water Conveyance, Reinforced Plastic Mortar Pipeline	G
430HH	Irrigation Water Conveyance, Rigid Gated Pipeline	NG
430FF	Irrigation Water Conveyance, Steel Pipeline	G
449	Irrigation Water Management	NG
460	Land Clearing PG	
543	Land Reconstruction, Abandoned Mined Land	G
544	Land Reconstruction, Currently Mined Land	G
466	Land Smoothing	G
468	Lined Waterway or Outlet	G
634	Manure Transfer	PG
353	Monitoring Well	G
484	Mulching	PG
378	Multi-Story Cropping	NG
590	Nutrient Management	NG
500	Obstruction Removal	PG
582	Open Channel	G
512	Pasture and Hay Planting	PG
595	Pest Management	NG
516	Pipeline	G
378	Pond	G
521C	Pond Sealing or Lining, Bentonite Treatment	NG
521-D	Pond Sealing or Lining, Compacted Clay Treatment	NG
521-A	Pond Sealing or Lining, Flexible Membrane	NG
521-B	Pond Sealing or Lining, Soil Dispersant Treatment	NG
338	Prescribed Burning	NG

Legend:

- G Ground Disturbing
- PG Potentially Ground Disturbing
- NG Not Ground Disturbing

Code	Practice Name	Rating
528	Prescribed Grazing	NG
532	Pumped Well Drain	PG
533	Pumping PlantG	
550	Range Seeding	PG
566	Recreation Land Grading and Shaping	G
568	Recreation Trail and Walkway	PG
345	Residue and Tillage Management, Mulch Till	NG
329	Residue and Tillage Management, No Till/Strip Till/ Direct Seed	NG
346	Residue and Tillage Management, Ridge Till	NG
344	Residue Management, Seasonal	NG
643	Restoration and Management of Declining Habitats	PG
391	Riparian Forest Buffer	PG
390	Riparian Herbaceous Cover	PG
558	Roof Runoff Structure	PG
610	Salinity and Sodic Soil Management	NG
350	Sediment Basin	G
646	Shallow Water Management for Wildlife	NG
	Soil Investigation Pits	G
572	Spoil Spreading	PG
574	Spring Development	G
578	Stream Crossing	PG
395	Stream Habitat Improvement and Management	PG
580	Streambank and Shoreline Protection	PG
585	Stripcropping	NG
587	Structure for Water Control	PG
606	Subsurface Drain	G
607	Surface Drainage, Field Ditch	G
608	Surface Drainage, Main or Lateral	G
609	Surface Roughening	PG
600	Terrace	G
612	Tree/Shrub Establishment	PG
660	Tree/Shrub Pruning	PG
620	Underground Outlet	G
645	Upland Wildlife Habitat Management	NG
645	Upland Wildlife Habitat Management INTERIM SPECIFICATION	NG
472	Use Exclusion	NG
601	Vegetation Barrier	NG
630	Vertical Drain	G

Legend:

- G Ground Disturbing
- PG Potentially Ground Disturbing
- NG Not Ground Disturbing

Code	Practice Name	Rating
367	Waste Facility Cover	NG
313	Waste Storage Facility	G
359	Waste Treatment Lagoon	G
633	Waste Utilization	NG
635	Wastewater Treatment Strip	G
638	Water and Sediment Control Basin	G
642	Water Well	G
614	Watering Facility	G
640	Water Spreading	PG
351	Well Decommissioning	PG
658	Wetland Creation	G
659	Wetland Enhancement	PG
657	Wetland Restoration	G
644	Wetland Wildlife Habitat Management	PG
648	Wildlife Watering Facility	PG
380	Windbreak/Shelterbelt Establishment	PG
650	Windbreak/Shelterbelt Renovation	PG

Legend:

- | | |
|----|-------------------------------|
| G | Ground Disturbing |
| PG | Potentially Ground Disturbing |
| NG | Not Ground Disturbing |

Attachment 4
Standard Cultural Resources Procedures for
COLORADO NRCS Personnel

Standard Cultural Resource Procedures for Colorado NRCS Personnel.

The following procedures will be used by CONRCS personnel who have successfully completed the mandatory NRCS National Cultural Resources Training Program for all NRCS federally funded activities. These procedures will be used for those activities normally planned and implemented at the NRCS field office (FO) level as specified in GM 420, Part 401.21 (d). For undertakings that require planning authority which exceeds that normally done at the FO level, procedures contained in GM 420 Part 401.21 (d) (2) will be followed.

1. Trained NRCS FO personnel will determine whether a planned action or practice is an undertaking with the potential to affect historic properties by referencing the list of exempted practices included in this agreement as Attachment 3.
2. If the FO has an action or practice that has no potential to affect historic properties, FO will note that information and will file with the cooperator's plan. The action or practice may proceed.
3. If the FO has an action or practice that is subject to review as above, FO will note that information on the Limited-Results Cultural Resource Survey Form and proceed with a review of relevant records of the area of potential effect (APE). Trained FO will perform a field investigation of the APE. FO will submit the Limited-Results Cultural Resource Survey Form to the Cultural Resources Specialist (CRS) who will complete a review of the Office of Archaeology and Historic Preservation's on-line historic properties database (COMPASS) and review data and maps submitted by FO. CRS will record the results of the records check and recommendations on the appropriate Limited-Results Cultural Resource Survey Form. The CRS will use the records review to determine if extenuating circumstances may exist in the APE such as particularly dense, unusual, or deeply buried cultural resources. The CRS will determine if extenuating circumstances require survey by a cultural resources professional or if the field investigation by the trained FO is adequate. If no extenuating circumstances exist and if no known or possible historic properties are noted, the action may proceed as planned. If any known or possible cultural resources are noted within the APE and cannot be avoided, the Resource Conservationist will contact the CRS for evaluation of the resource and professional assistance.
4. If historic properties are found within the APE by field office personnel, they shall contact CRS. The CRS will visit the project site and complete the appropriate Colorado Cultural Resource Survey forms for each resource identified for a particular practice or Contract Item Number (CIN). They also will make a determination of eligibility of the resource(s) for inclusion on the NRHP. The topographic map will also show the area proposed for installation of a practice (and the area subjected to a historic properties inventory, if the two areas differ). If the discovery of a cultural resource causes alteration of a proposed route or area proposed for treatment, the areas surveyed for the original route and the altered route will both be shown on the topographic map.
5. CONRCS will retain a copy of all Limited-Results Cultural Resource Survey Forms and attachments for reference. The CRS will submit a copy of all Colorado Cultural Resource Survey forms and attachments (including topographic maps and sketch maps of recorded sites) to the

Colorado State Historic Preservation Officer (SHPO) at the Colorado Historical Society in Denver.

6. The Colorado SHPO will have 15 working days from receipt of the material from NRCS to provide comment.

7. In the case of an emergency, the CRS will complete the abbreviated form (Attachment 7) and submit to the SHPO for consultation.

Attachment 5
Supplemental State Level
Cultural Resources Training Plan

CULTURAL RESOURCES MANAGEMENT TRAINING

The following addresses the Natural Resources Conservation Services (NRCS) training program for Cultural Resources Management (CRM). Training sessions involve participants completing Modules 1-6 of the NRCS National CRM Training Program available through the AgLearn web site as a prerequisite for the Colorado CRM Workshop covering Modules 7 & 8. Certificates from the AgLearn course are collected at the beginning of the Colorado Workshop. Videos, instructor/facilitator lectures and lab, and field and museum visits make up Modules 7 & 8. Partners and contractors are encouraged to participate in the National Employed Development Center (NEDC).

AgLearn:

- go to www.aglearn.usda.gov and log in as a student using your USDA eAuthentication identification
- select **Catalog** from the top menu link
- under **Subject area menu** scroll down and select **Natural Resources Conservation Service**
- select the **Cultural Resources Training Series, Part 1**, and click the launch button to access the course. Complete the course.

The training is usually in cooperation with other federal agencies, Colorado Office of Archaeology and Historic Preservation staff when available, local museums, American Indian Tribes, and local landowners.

Modules 1-6

Modules 1-6 address the procedures of CRM. These modules were originally developed based on General Manual Part 401 of USDA NRCS and the regulations proposed by the Advisory Council on Historic Preservation addressing historic properties synonymous with cultural resources. The lecture includes a review of Modules 1-6.

Modules 7 and 8

Module 7 and 8 are the lab and field instruction. Local Prehistory and History of Colorado provides a context for field personnel. In the handbook for Colorado, the laws, regulations, forms and procedures are provided to each participant.

Lab

The lab includes examples of cultural resources and information on Traditional Cultural Places/Sacred Sites, cultures of the area, flint knapping techniques, and burial issues. Instruction in NRCS paperwork and other pertinent types of background research are included.

Contents of the Colorado Handbook:

Checklist

Canals

Colorado State Laws

Section 1 Introduction and Process

The Role of Cultural Resources in NRCS

CRM Program Goals and Vision

Cultural Resources Ground Disturbing Potential for Conservation Practices

Cultural Resources Technical Note #1

Limited Resource Form (CO-SSC-1 Colorado's review form)

CO-SSC-2 form (Discoveries)

Sample response memo from State Office

Section 2 Policy and Protocol

NEPA Call-In Flow Chart

Executive Order No. 13007

Federal Tribal Consultation

State-level Agreement and addendum

National Cultural Resources Procedures Handbook

GM 420 Part 401 Cultural Resources (Archeological and Historic Properties)

PRS Definitions

National Conservation Practice Standards – Status

Alternatives for Implementing Section 106 of the National Historic Preservation Act

An Assessment

Section 3 Contacts

Department of Agricultural Resources Conservation Service Directory

Cultural Resources Coordinators and Specialists

American Indian Liaisons & Cultural Resources Specialists/Coordinators

Tribal Conservation Districts National Phone Directory 2004

Northern Plains American Indian State & Tribal Liaisons & Service Providers
2003

Map of Attractions

Evaluation Sheet

Section 4 Reference Material Background Information

National Register Bulletin #29

Cultural Resources Report No. 31 USDA Forest Service

Historic Artifacts IMACS Users Guide

Stone Tools

Federal Register Part II – Advisory Council on Historic Preservation

History – Park & Historic Preservation Laws

A Profile of Cultural Resources of Colorado

Section 5 Alternative Resources

PAAC Class Schedule (Office of Archaeology and Historic Preservation OAHP)
Technical Service Providers

Field

Field portions of the training are within a two-day period and involve on the ground survey, site visits, a flint knapping demonstration, and exposure to cultural resources of various types. NRCS survey techniques are included.

Review

The review is of Modules 1-8.

Certificates

Certificates are to be signed by the State Conservationist, placed on plaques and are presented by the Area Conservationist to each participant completing the National CRM training over modules 1-8.

Previous Training Cooperators:

Bureau of Land Management (BLM)

Richard Fike, Archaeologist, Uncompahgre Field Office, Montrose, CO

National Forest Service (NFS)

Dr. Michelle Stevens, Archeologist, Comanche National Grasslands, La Junta, CO
Mark Mitchell, Archeologist, Comanche National Grasslands, La Junta, CO
Jeff Overturf, Archeologist, Arapaho-Roosevelt USDA NFS, Fort Collins, CO
Al Kane, Heritage Resource Program Manager, USDA NFS, Pueblo, CO

Bureau of Reclamation

Warren F. X. Hurley, Archeologist, Western Colorado Area Office, Durango, CO

Bureau of Indian Affairs

Southern Ute Indian Tribe

Ute Mountain Ute Indian Tribe

National Forest Service (NFS)

Sally Crum, Archeologist, Colbran, Grand Junction & Paonia Ranger Districts,
USDA NFS, Grand Junction, CO

Bureau of Reclamation in Grand Junction:

Mike Berry, Archeologist, Grand Junction Field Office, Grand Junction, CO

Attachment 6
Consultation for Ancestral Lands
Colorado Process

**Consultation for Ancestral Lands
Colorado Process
(3/7/02)**

The Colorado State Conservationist, or a representative, is responsible for consultation on a Government-to-Government basis with American Indians. Activities that have the potential to disturb reservation land and/or ancestral land require consultation. Ancestral land is land the American Indians once inhabited. A *reasonable and good faith effort* to contact these Tribes is required (please see legal mandates following narrative). Information available at the Colorado Historical Society, the Colorado Council of American Indian Affairs, and the National Park Service indicates that consultation with American Indians involves the following Tribes interested in Colorado:

Ute Mountain Ute Tribe of the Ute Mountain Reservation, Colorado, New Mexico,
and Utah
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Cheyenne-Arapaho Tribes of Oklahoma
Uintah and Ouray Ute Tribe
White Mesa Ute
Witchita and Affiliated Tribes
Northern Arapaho Tribe of Indians of the Wind River Reservation
Northern Cheyenne Indians of the Tongue River Reservation, Montana
Apache Tribe of Oklahoma
Jicarilla Apache Tribe of Jicarilla Apache Indian Reservation, New Mexico
Kiowa Indian Tribe of Oklahoma
Comanche Indian Tribe of Oklahoma,
Pawnee Tribe of Oklahoma
Cheyenne River Lakota Tribe
Crow Creek Lakota Tribe
Ogala Lakota Tribe
Standing Rock Sioux
Rosebud Lakota Tribe
Shoshone Tribe of Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
The Hopi Tribe
Pueblo of Acoma
Pueblo of Cochiti
Alamo Navajo Chapter
Pueblo of Isleta
Pueblo of Nambe
Navajo Nation
Pueblo of Picuris
Pueblo of San Juan
Pueblo of Pojoaque

Ramah Navajo Chapter
Pueblo of Santa Clara
Pueblo of Sandia
Pueblo of Santana
Pueblo of Zia
Pueblo of Santo Domingo
Pueblo of Taos
Pueblo of Tesuque
Pueblo of Jemez
Pueblo of San Felipe
To'ahjilee Navajo Chapter
Pueblo of Zuni
San Idelfonso Pueblo
AIPC - All Indian Pueblo Council
Eight Northern Indian
Five Sandoval Indian Pueblos, Inc
Ten Southern Indian Pueblo
Apache Tribe of Oklahoma
Three Affiliated Tribes (Arikara, Hidatsa, Mandan)

These Tribes reside in Colorado, Oklahoma, Arizona, Montana, New Mexico, South Dakota, Montana, Wyoming, North Dakota, and Utah.

The NRCS process establishes contact with non resident parties (**the State Conservationist of the State where the Tribe resides and their representative handle negotiations**). Identify operating procedures for all States involving the Tribe. If the Tribe is not interested in contact, follow up with a letter to the Tribe asking if this is the preferred process with Colorado NRCS. If no answer, follow up with a telephone call. No further action is necessary if this is confirmed. Document the outcome and keep on file.

If further contact is necessary, determine appropriate people to contact regarding consultation and their preferred process, either formal or informal negotiations.

Formal Consultation Process in Colorado through liaisons if possible (out-of-State handled by State Conservationist and representative of that State):

- Initiate with telephone call
- Follow up with letter to the appropriate person in the Tribe and arrange meeting
- Face-to-face meeting (if possible)
- Follow up with a letter restating the perceived results of the meeting
- MOA/MOU as necessary--Request an agreement based on the needs of the Tribe
- Document the outcome and file

Informal Consultation Process Based on the suggestions of the Tribe:

- Initiate with telephone call
- Follow up with letter
- Face-to-face meeting preferable
- Follow up with a letter restating the perceived results of the meeting
- Document the outcome and file

Follow up with calls or letters at least once a year to make sure that the process is operating properly.

Other Areas of Discussion in the Process:

Attached is a list of minimum levels of contact with their authority. They include notifying the Indian Tribe that may consider a site as having religious or cultural importance or an Indian Tribe affected in any way. Items considered an effect are excavation, discovery of human remains, determinations of eligibility, activities that have the potential to impact historic properties, and actions deemed as protecting historic properties. The Tribe may recommend other items requiring consultation.

Legal Mandates

- 36 CFR 800
- National Historic Preservation Act
- National Environmental Preservation Act
- Executive Order 13007: Indian Sacred Sites (1996)
- Native American Graves Protection and Repatriation Act (NAGPRA 43 CFR 10 1997)
- Secretarial Order -- Subject: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act
- Archeological Resources Protection Act
- Executive Order 13175 -- Consultation and Coordination with Indian Tribal Governments (1998)
- 4/29 (1994) -- Government-to-Government Relations with Native American Tribal Governments Memorandum for the Heads of Executive Departments and Agencies

Attachment 7
Emergency Worksheet

Checklist for Documentation
Colorado Natural Resources Conservation Service
United States Department of Agriculture (9/10/02)

Resource number _____

County _____ Meridian _____
Legal description T _____ N/S R _____ W/E Sect. _____ USGS Quad _____ Date _____
UTM _____ ME _____ MN (based on _____)

Criteria: Does not meet National Register criteria
 A. Associated with events significantly contributing in history
 B. Associated with lives of persons significant in our past or present
 C. Distinctive characteristic, high artistic value, or components
 D. Yielded or may yield information

Exceptions a through g (includes criteria considerations: a) owned by a religious institution or used for religious purposes; b) removed from its original location; c) a birthplace or grave; d) a cemetery; e) a reconstructed building, object, or structure; f) a commemorative property; g) less than 50 years of age or achieved significance within the past 50 years, National Park Service Bulletin, 1977)

National State Local

Site type categories paleontology prehistoric historic district

Boundaries _____

Site dimensions (or panel art) _____

Topographic feature(s) _____

Context _____ or Theme _____

Time Period _____ Justification _____

Associated buildings, features, objects _____

Photograph number(s) _____

Condition (Structural/Architectural/Archeological/Paleontology):

Excellent Good Fair Deteriorated Ruins

Threats:

Vandalism Wind erosion Grazing Neglect Recreation Construction

Protection:

None Marked Fenced Patrolled Access controlled Other _____

Abundance of artifacts Heavy Light Describe _____

Linear resource Entire Segment

Rock art motif _____

Petroglyph: Solid-pecked Stipple-pecked Cupule Abraded Incised Scratched

Pictograph: Polychrome Monochrome Other; Colors _____

Design patination _____

Kind of rock _____ Lichen _____

Background _____ Height from ground: _____ Highest _____ Lowest _____

Elevation _____ Geology _____

Vegetation _____ Water source _____

Total Acres _____ Ground visibility _____

(a copy of the quadrangle with location, photographs, and sketch map required)